

Steinar Imsen (ed.)

Legislation and State Formation

Norway and its neighbours in the Middle Ages



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Legislation and State Formation

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Norway and its neighbours in the Middle Ages

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Trondheim, September 2013
Steinar Imsen

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Part 1
From provincial law books
to nation-wide codes and
statutory law



Chapter 1: Law and justice in the realm of the king of Norway

Steinar Imsen

Introduction

‘By law shall our land be built’, thus begins § 6 in the chapter about local assemblies and courts (ON n. pl. ‘þing’) in the provincial code of Frostating (*Frostatingsloven*).¹ The sentence is often quoted as an expression of the inherited sense of justice among Norwegians, and of the strong emphasis on law in the Norse communities in the Middle Ages. Indeed, it greets anyone who arrives by sea in Lerwick, Shetland, as soon as they set foot on dry land. However, the idea that society must be based on law is not a particularly Norwegian one. According to Helle Vogt, as shown later, the same statement is found in the Law of Jutland (*Jyske Lov*) from 1241, and in both cases the original source is Roman law. Whether the point was borrowed from Emperor Justinian’s *Digestae* first by the Jutlanders and then by the people in Trøndelag, or vice versa, shall remain an open question.

Frostatingsloven dates from c.1260, and was issued in the name of King Håkon Håkonson.² We know that King Håkon had been working on a revision of the law book of the people of Trøndelag for some time, and that the final version included a considerable number of elements from a much older code that no longer exists. For example, § 50 of the section on manslaughter, treason, etc. declares:

1 NgL I: 128: And it continues thus: ‘[A]nd let it not be laid waste by lawless behaviour. And whoever will not allow another his legal rights shall not enjoy law’ (‘At lögum skal land vårt byggja en eigi at úlögum eyða. En sá er eigi vill öðrum unna scal eigi laga nióta’). *Frostatingsloven* is named after Frosta by the Trondheim Fjord, which was the venue of the provincial assembly (law thing) of Trøndelag and its neighbouring provinces.

2 Cf. note 8

No man shall commit violence against others, neither the king nor anyone else. And if the king is violent, a war arrow shall pass from ‘fylki’ (county) to ‘fylki’, and he (the king) shall be chased after, and if caught, he shall be killed. But if he escapes, he shall never return to the land. And he who refuses to chase after him shall be fined three marks; likewise he who fails to pass the arrow on.³

None of the other Nordic provincial codes contain a corresponding right of rebellion. The paragraph on rebellion in *Frostatingsloven* tells us that the rule of law applied without exception to everybody, even the king. One may ask why this paragraph was included in a code issued by the king; the right of rebellion, reminiscent of a distant era when kings were not yet the Lord’s anointed, was totally out of step with the times in 1260.

According to the sagas, King Magnus Olavsson the Good (r.1035–47) initiated the first codification of the laws for the Trøndelag law province. We shall let questions about the trustworthiness of the sagas lie; Jørn Sandnes claims, however, that we cannot rule out that the rebellion paragraph of *Frostatingsloven* dates back as far as the early eleventh century. In other words, it may have come into being in the aftermath of the fall of the ruthless king Olav Tryggvason in AD 1000. Others have claimed that the paragraph reflects the ill feelings harboured among the people of Trøndelag towards King Olav Haraldsson. He also ruled with violence, and was killed by a peasant army at Stiklestad in 1030.⁴ King Olav’s canonisation a few years later is a different story altogether. What is an undoubted fact, however, is that there existed an older law book for Trøndelag – referred to in *Sverre’s Saga* (c.1200) as *Grágás*⁵ – and like the revised version from the reign of King Håkon, it was probably a compilation of old and new legislation.⁶ Incidentally, the oldest Icelandic law is also known by the same name.

Furthermore, we know that Archbishop Eystein Erlendsson (1161–88) revised parts of *Grágás*, and that he codified a new Christian law called *Gullfjær*. Arch-

3 NgL I: 172f: ‘Engi maðr skal atförr at öðrum gera hvárki konungr ne annarr maðr en ef konungr gerer. þa skal ör scere oc fara láta fylki öll innan. oc fara at honum oc drepa hann ef taca má. En ef hann kemz undan. þa skal hann aldregi koma í land aptr. En hverr er eigi vill fara at honum skal giallda mercr iij oc svá ef ör þá feller.’ County is not a very good translation of ON ‘fylki’ (n.), which in the account of Othere’s voyages (in King Alfred’s version of Orosius’ *Historiae*) is rendered into Old English ‘scir’, which etymologically relates to shire (‘Othere sæde þæt scir hatte Halgoland’, J. Batley et al. 2007: 47). However there were no such administrative units as county or shire in Norway in c.900 AD, so perhaps the more neutral term ‘district’ might be the best translation of ON ‘fylki’.

4 J. Sandnes 1992: 64ff

5 F. Hødnebo and H. Magerøy 1979a: 171

6 Jan Ragnar Hagland and Jørn Sandnes 1994: ix–xi

bishop Eystein was a key figure in the formation of a separate Norse church, established with the erection of a metropolitan see in Nidaros (Trondheim) in 1152 (or 53). From its inception, this church province spanned the entire Norse world, far beyond the mainland realm of the Norwegian monarchs. Eystein was obsessed with the idea of building church and kingdom by law. He was in frequent contact with Pope Alexander III, who issued a series of papal responsa to the Norwegian archbishop's steady inquiries about the correct understanding of legal questions pertaining to the Church. Transcripts of Alexander's authoritative replies are to be found in the British Library in London even today. Eystein also participated in the earliest known legislative efforts on a national level in Norway, which are attributed to King Magnus Erlingsson (r.1161–84).⁷ It is likely that Eystein Erlendsson authored the law of royal succession bearing King Magnus's name, which came into existence in connection with the king's coronation in Bergen in 1163 (or 64). Given the Archbishop's knowledge of canon law, which in those days provided the main access to Roman law, we have reason to believe that Eystein Erlendsson was the source of the borrowed wording about the rule of law in *Frostatingsloven*.

From this we can conclude that the Norwegian provincial laws, known to us as codified and authorised texts, were a function of ecclesiastical and royal power and, as such, an aspect of state formation. Furthermore, the new laws bear witness to interaction between domestic legal traditions and European jurisprudence. Our overarching question is therefore: What role did law and legislation play in the relationship between the Norwegian king and his distant lands overseas – the so-called 'skattlands' (tributary lands) – and the peripheral provinces of his mainland realm? And, what impact did the king's legislation have on social development in these outlying areas?

The 1260s constitute a turning point in the relationship between the Norwegian monarchy and the Norse world to the west. The Icelanders and Greenlanders pledged fealty to the Norwegian king (1261–64), and King Magnus Håkonsson ceded the Kingdom of Man and the Isles to King Alexander III of Scotland (1266). The 1260s and 1270s were a turning point for royal legislation as well, which shall be our main focus here, but first we must take a look at conditions prior to 1260.

7 P. Landau 2011: 57–72

Communities of law – up to 1260

Provincial laws and law provinces

The oldest Norwegian law book preserved more or less intact dates from the first half of the 1200s, namely the provincial code of Gulating (called *Eldre Gulatingslov*).⁸ Fragments of an even older code for the province of Gulating can be traced back to the late 1100s. Knut Helle suggests that the oldest version of *Gulatingsloven* may have been codified during the reign of King Olav Kyrre (r.1093–1103), and that the extant law book manuscript from the first half of the 1200s is based on a major revision of *Gulatingsloven* during the reign of Magnus Erlingsson (r.1161–84).⁹ *Eldre Gulatingslov* also refers to an even older code attributed to St. Olav. However, the references to Olav Haraldsson as legislator should be taken with a pinch of salt. During the reign of Magnus Erlingsson, King Olav was officially proclaimed patron saint of the realm, and he had long since obtained unofficial status as protector of law and justice. The more recent text in *Eldre Gulatingslov* is attributed to King Magnus.

In the contemporary *Historia Norwegie*, the Realm of Norway is depicted as a bundle of ‘patrias’, a term best translated as ‘law provinces’.¹⁰ Along the coast, from the Göta River in the south (on the border between Norway, Sweden, and Denmark) to Hålogaland in the north, four such communities of law are said to exist: Viken (the Oslo fjord area), the Gulating law province (western Norway), the Trøndelag law province (mid Norway), and finally Hålogaland (northern Norway). Hålogaland was a border province where many ‘heathen Lapps’ coexisted with the Norwegians, according to *Historia Norwegie*. The inland and mountain valleys of eastern Norway are also said to be divided into four law provinces: the rich farming districts around the big lakes, the south-eastern mountain valleys, the forest

8 The younger (Norw. Yngre) *Gulatingslov* is the revised code for Gulating law province issued by King Magnus Håkonsson in 1267. *Frostatingsloven* from 1260 mentioned earlier is also called *Eldre Frostatingslov* now and then since it is the oldest extant code for the Frostating law province. However, since a revised edition of *Frostatingsloven* was planned but never brought to an end, the younger *Frostatingslov* is the Frostating version of King Magnus’ Code of the Realm, which replaced all provincial codes in Norway 1274–76; see later.

9 K. Helle 2001: 11–23, cf. M. Rindal (1994: 12) will not let out the possibility that the oldest *Gulatingslov* was written down even earlier in the eleventh century.

10 One could also mention, in passing, that according to the Icelandic historian Sverrir Jakobsson (1999: 99f), *Historia Norwegie* presents a more accurate picture of Norway than the Icelandic sagas, whose focus is on the different kings. It was these ‘patria’ (homelands or provincial law areas) that people tied their identity to before the governing of the country was largely taken over by the monarchy (thus laying the foundations for a more overarching national identity).

districts and valleys to the east, and finally, the long Gudbrandsdalen valley which connects eastern Norway with Trøndelag.¹¹ Even though the four inland law provinces in *Historia Norwegie* are a bit problematic, the very idea that the realm was a collection of law provinces fits well with existing knowledge about Norway's political and judicial structure around 1200. At the time, Norway consisted of four large law provinces: three along the coast (Borgarting, Gulating, and Frostating) and only one inland (Eidsivating).¹² All of these law areas had got their own code by c.1200. Hålogaland's status as a law province of its own is disputed, and Miriam Tveit takes a closer look at this issue in chapter 2.

Denmark was also organised in law provinces. There were three of them: Jutland, including Funen and present-day Schleswig; Zealand with neighbouring islands; and Scania with Halland, Blekinge, and Bornholm. Like Norway, the provincial laws of Denmark were probably written down in the second half of the twelfth century. Both Crown and Church have probably been involved in provincial legislation. But nothing is left of these earlier codes. *Skånske Lov* (the law of Scania), *Valdemars sjællandske Lov* (King Valdemar's code for Zealand), and *Eriks sjællandske Lov* (King Erik's law for Zealand) date to the first decades of the thirteenth century. However, they are not official codes, but rather law collections.¹³ The law of Jutland (*Jyske Lov* 1241), on the other hand, is an official code. In the prologue we are told that King Valdemar (II) had seen to it that the laws of the land were codified, and that he had given the law with consent from his sons, all bishops in Denmark, and the best men of the realm. Probably *Jyske Lov* was sanctioned at the provincial assembly ('landsting') at Viborg. Like *Frostatingsloven*, which in the transmitted text is issued in the name of Håkon Håkonsson, *Jyske Lov* is the king's law, and they both signal the transformation of the realms of Denmark and Norway into monarchic states.¹⁴

Sweden too was divided into law provinces known as 'lagsagor', each with their own laws. But with regard to the codification of the laws, Sweden lagged behind Norway and Denmark. The oldest extant Swedish code comes from the western

11 HN: 55–59.

12 The names of the law provinces along the coast come from the site of the *løgþingi* (provincial assembly, Frosta, Gulen, Borg) while the inland law provinces at Eidsvoll are named after the lake *Heiðsær* (an old name for Lake Mjøsa) and refer to the people around this lake (NgL V: 148); cf. the name of the district *Heiðmörk*.

13 Jens Ulf Jørgensen 1991: 555

14 See also Helle Vogt in chapter 5: 86

part of Sweden. There are two versions of a code for Västergötland (a fragment of *Äldre Västgötalagen*, c.1250) and a more complete version from the period after 1281 (*Yngre Västgötalagen*). Thomas Lindkvist says (chapter 3): '[T]he legislative initiative was in Västergötland under control of the law-speakers of the land. In the second version of Västgötalagen the royal influence is evidently greater. The canonical law of the Church was only partly implemented in Västergötland at the end of the thirteenth century.'¹⁵

The Swedish law-speaker corresponds in many respects to his Icelandic namesake, the 'lǫgsögumaðr'. In Sweden, the law-speaker was usually one of the province's leading men, a fact which indicates that during the earliest phase of codified legislation in Sweden, legislation was controlled by the provincial aristocracy, at least in the western part of the country. We must assume that the provincial code was subject to approval by the provincial assembly. In some ways, the situation in western Sweden resembles the situation in Iceland prior to the takeover of the Norwegian king in the 1260s. It was not until the last decades of the thirteenth century that the Swedish kings, now based in the central eastern landscape of Svealand (around Lake Mälaren), defined legislation as part of their royal authority. In other words, with regard to legislation and state formation, Denmark and Norway were far ahead of Sweden in the first half of the thirteenth century.

The 'skattlands'

A separate chapter is dedicated to the king's 'tributary islands' in *Historia Norwegie*. They are the Norse-British principalities along the northern and western coasts of Britain (Orkney-Shetland and Man and the Isles) plus the Faeroes.¹⁶ Nothing is said about their laws or court systems; in fact, we know very little about law and justice in the Norse-British communities before the *Magnus Code* was introduced in the late 1200s.

Norwegian law historian Knut Robberstad claims that Orkney, Man, and the Hebrides had their own Norse-type laws and legal traditions for a very long time.¹⁷ Edvard Bull also assumes that Orkney had its own code that differed from the provincial codes in Norway. Shetland, on the other hand, may have introduced the code of Gulathing in the early 1100s, he argues, pointing to the archipelago's close

¹⁵ See below: 58

¹⁶ Iceland too is referred to in HN (69–75), cf. *ibid.*: 13, but not as a tributary land. We are told that the land was settled from Norway, but nothing is said about its eventual political ties to the king of Norway. The chapter is mostly about Icelandic nature and climate, volcanoes, earth quakes, etc. With regards to Greenland it is said to be an Arctic fringe of the civilized world, discovered, settled and christianized from Iceland (HN: 54f.)

¹⁷ K. Robberstad 1976: 165ff

ties with Bergen and western Norway.¹⁸ This is pure guesswork, but we cannot let out that the Shetlanders may have adopted *Gulatingssloven* after 1195, when the Earl of Orkney was forced to give up Shetland to King Sverre. The Shetlanders nonetheless continued to draw on their legal heritage from the earldom until the turn of the thirteenth century.¹⁹ Richard Oram has shown that there was a close kinship in terms of social organisation and judicial culture between all of the Norse-British island communities, as well as adjacent Norse communities in parts of the northern British mainland, during the Middle Ages. As demonstrated by Per Sveaas Andersen, these similarities amounted to regional variations on an adopted pattern that was distinctly Norse but cast in what we might call a British mould.²⁰

In the early 1200s, Jemtland seems to have become part of the Norwegian community of law provinces. The unification of Scandinavian realms was still a somewhat unfinished process as the 1200s began, and it was only by mid-century that most of the provinces along what would become the Norwegian–Swedish border had found their place, for now, in one realm or the other. Thus, in the 1160s–70s, *Historia Norwegie* describes Jemtland as an independent country beyond Norway. Jemtland’s incorporation into the realm of the Norwegian king is usually dated to the reign of King Sverre (r.1177–1202). At a meeting in Bergen in 1223, the lawman of Frostating, the lawman of Hålogaland, and the lawman of Jemtland were all described as lawmen of the Trøndelag law province.²¹ This must be taken to mean that the Jemtlanders had now adopted *Frostatingsloven* (see Miriam Tveit later).

We must also assume that the oldest law of the Faeroes followed the western Norwegian pattern in many respects, though there is no reason to believe what is said in the *Færeyinga saga* that the Faeroes had promised King Olav Haraldsson to obey his laws.²² Hans Jacob Debes maintains that the legal system in the Faeroes resembled that of Iceland, and that the Faeroes too had their own law-speaker.²³ Moreover, we should add that the island also had its own law book, which is referred to in Magnus Håkonsson’s amendment (ON ‘rettarbót’) in 1271.²⁴ Nothing is left of this Faeroese law book, but when the revised version of *Gulatingssloven* (1267) was introduced, the ‘bunaðarbolc’ (i.e. the chapter on agriculture and local economy) from the former law book was incorporated into the new one.

¹⁸ Edvard Bull 1931: 134f

¹⁹ Smith 2012

²⁰ R. Oram 2011: 57–76; cf. P. Sveaas Andersen 1995: 5–50.

²¹ K. Robberstad 1976: 170f

²² Íf XXV: 91f

²³ H.J. Debes 1995a: 35

²⁴ NgL IV: 354

The picture that emerges is consequently that the Norse island provinces west of Norway had their own laws and legal traditions that were related to earlier laws and judicial culture in Norway. Furthermore, the ever-closer political ties to the King of Norway at the turn of the twelfth century may have eased the introduction of Norwegian laws in Shetland, the Faeroes, and Jemtland. The Norse world under Norwegian domination did not yet constitute ‘a unified community of law’ by the death of King Håkon (1263), although the different legal systems were related, and the Crown was ready to expand the geographical area of its legislative efforts.

Iceland

Although Iceland was the last country to submit to the Norwegian king, it does not necessarily imply that the Icelanders were more detached from Norway and the Norwegian monarchy than the other Norse peoples. The reverse was in fact the case. The Icelanders had been cultivating their Norwegian origins from the time of the colonisation in the late 800s and into the late Middle Ages, although at this stage they could be regarded as – and had long been considering themselves – a separate Norse people. According to *Íslendingabók*, the Icelanders imported legislation from Norway around 930 AD. By this time, most of the country had been settled. The law of Gulating was used as a basis for creating domestic law, as Patricia Pires Boulhosa observes:

These laws, it seems, were materials from which other laws were set up in Iceland with the advice of wise men. The passage (in *Íslendingabók*) seems to speak of ‘lög’ in one of the original senses – ‘things laid down’ – and not as a fixed or permanent set of rules (let alone codified laws).²⁵

Norwegian law was not forced on the Icelanders; they found laws in western Norway on which to build their own community. Going into details about what the law of Gulating may have amounted to before it was codified in the 1100s (or perhaps as early as the late 1000s) is beyond our scope. *Íslendingabók* reports further that some 200 years later (c.1120), when the law-speaker Bergþórr Hrafnsson recited the laws at the Alþingi (the general assembly), it was decided that they were to be codified.²⁶ However, an Icelandic code corresponding to the Norwegian provincial codes is not known to have existed prior to 1271, when King

²⁵ See below: 169

²⁶ Íf I: 23

Magnus Håkonsson's new *Gulatingsslov* was introduced in Iceland. The Icelandic version was to be given the name *Járnsiða*.

Two comprehensive Icelandic law manuscripts dating from the 1250s have survived, however: *Konungsbók* and *Staðarhólsbók*. Together with some law fragments, they constitute a corpus of what has been considered to be the old law of Iceland, known as *Grágás*. However, since the extant manuscripts should be regarded primarily as private law collections, the Icelandic Free State has left behind no official code.

We shall not dwell too long on these manuscripts and their understanding of Icelandic law, which are analysed by Patricia Boulhosa in chapter 9. Who wrote *Konungsbók* and *Staðarhólsbók*, and for whom, is unknown. According to Ólafur Lárusson, there are considerable differences between the two manuscripts, although they have some textual elements in common.²⁷ The origins of the different text segments cannot easily be determined.²⁸ Nevertheless, we have reasons to assume that each regulation was regarded as the existing law on the matter, or that it was at least maintained to have legal validity. Many of these points were later to be included in *Jónsbók*, the ultimate Icelandic code issued in the name of King Magnus Håkonsson in 1281.

It is not unreasonable to assume that the writing down of Icelandic law in the 1250s was part of the preparations for an anticipated political association with Norway. The timing supports this theory. Some of the provisions in *Grágás* indicate a close relationship to Norway and Norwegians; and some provisions may even have been shaped with future negotiations in mind, for example the statute ascribed to King Olav Haraldsson (St. Olav) which describes the rights enjoyed by Norwegians in Iceland, and the corresponding rights of Icelanders in Norway. The only mention of this statute is found in *Konungsbók*.²⁹ The authenticity of this law is therefore questionable, although the text reports that it was confirmed under oath by Bishop Gissur (in Skálholt 1082–1118), his son Teitr, and seven other good Icelanders, as well as by Bishop Ísleifur (1056–80, Iceland's first bishop) and others.

Olav Haraldsson is unlikely to have sanctioned the writing down of such a 'law', or any laws for that sake. But in terms of lending authenticity and legal force to a law, Olav's name trumped most other factors. Moreover, some of the rights allegedly held by the Icelanders are unlikely to have existed in Olav's time, for example the described privileges connected to 'toll' (duty) and 'landaurar'. Icelanders were granted exemption from paying 'toll' when visiting Norway, we

²⁷ Ólafur Lárusson 1960: 410–12.

²⁸ Hans Fix 1993: 234f.

²⁹ NgL I: 437f, cf. NgL IV: 398. See also Gunnar Karlsson et al. 2001: 478–80

are told. But there was probably no such thing as ‘toll’ in Norway at the time of King Olav. According to Grethe Authén Blom, ‘toll’ has not been documented in Norway until the late thirteenth century.³⁰ Instead of ‘toll’, the Icelanders apparently had to pay another fee called ‘landaurar’ when they landed in Norway to offer up their wares. Those who had already paid this tax ‘i eyiom eða Hialltlande’, however, were exempted from paying when arriving in Norway. The supposed exemption involved the western and northern isles of present-day Scotland. The fact that Shetland is not included in the ‘eyiom’ (the islands) suggests that this provision, at best, postdates commencement in 1195 of the Norwegian Crown’s direct rule over Shetland – which had up to this date been part of the Earldom of Orkney.³¹ Besides, we know from other sources that when Guðmundr Arason headed for Norway in 1202 to be ordained a bishop, his ship drifted off course and ended up on the Hebrides (Suðreyjar) – where Olav, the local king, claimed a hefty landing fee from the Icelanders. Attempts were made to haggle over the amount because they knew that they would have to pay again upon arriving in Norway.³² Moreover, in addition to the landing tax to the King of Norway, the Icelanders would have to make a payment to the Church at Nidaros, according to the story. We should add that neither ‘toll’ nor ‘landaurar’ occurs in the oldest town law of Norway (*Bjarkøyretten*), and the next time ‘landaurar’ appears is in 1262, in the so-called settlement between the Icelanders and the king of Norway.³³

All in all, it is tempting to conclude that documents were prepared in Iceland in the 1250s in the eventuality that they might be useful in subsequent negotiations with the king’s men. The threshold for using falsifications was low during the Middle Ages. The claim that Olav Haraldsson had guaranteed all Icelanders in Norway ‘rights equal to those of a hauld’ is also interesting from the point of view that there was a certain amount of positioning going on. The term ‘hauld’ was quite old-fashioned in Magnus Hákonsson’s time, and its meaning is somewhat inconsistent in the older Norwegian codes – but it mainly describes the leading men of the farming community. Arne Bøe believes that the ‘haulds’ must have constituted a relatively small group at the time of *Landsloven* (1270s).³⁴ *Eldre Gulatingslov*

30 G.A. Blom 1974: 439f; cf. ‘tollr’, NgL V: 646

31 The ‘landaurar’ issue also relates to the problem of royal authority in the Northern Isles. There is reason to be sceptical about the sagas when they mention that King Olav Haraldsson asserted his lordship over the earls of Orkney. Moreover, he certainly did not interfere in internal matters in the islands. I also doubt that such a thing as ‘landaurar’ existed in Orkney and Shetland in the early eleventh century (Brian Smith 1988: 26–28). These accounts were written at a gap of two centuries when the Norwegian kings were about to expand their realm westwards.

32 R. Power 2005: 41f

33 NgL I: 461

34 A. Bøe 1961: 251–54

states that Icelanders on a mercantile trip to Norway who stay in the country shall enjoy ‘rights equal to those of a hauld’ for up to three years, whereupon their legal status shall be such that witnesses can confirm that they are entitled to these rights. Other foreigners, in contrast, were only to be granted rights equal to those of a farmer (ON ‘bóndi’ m.).³⁵ We know that in the negotiations with the king’s men in 1262, the Icelanders set as a precondition that their rights in Norway should not in any way be inferior to the rights they had enjoyed at the best of times, which meant the rights of a ‘hauld’ (provided that King Olav’s ordinance was considered valid). Sometime later, their status was adjusted upwards when the sections in *Landsloven* regarding ‘rights equal to those of a hauld’ were encoded in the Icelanders’ *Jónsbók*: ‘riddari’ (knight) replaced ‘hauld’, and ‘riddarkona’ (knight’s wife) replaced ‘hauldskone’ (hauld’s wife).³⁶

Greenland submitted to the King of Norway a year earlier than Iceland (1261). Very little is known about law and social organisation in this remote Norse land, which consisted of two settlements called the eastern and western communities (ON *Eystri bygð* and *Vestri bygð*). There are references to Greenlandic laws in some Icelandic sagas, but we don’t know anything about them. Probably social organisation in Greenland has resembled that of Iceland, and there had been a lot of contact and even social ties between Icelanders and Greenlanders. We find provisions in both Icelandic and Norwegian laws about how to treat inheritance and manslaughter in Greenland, which may have been considered a law community of its own, though some historians hold that Greenland was included in the Icelanders’ definition of ‘within our laws’.³⁷ There have also been assemblies in Greenland like in the other Norse lands, probably a general assembly as well, at least one for *Eystri bygð*.³⁸ Moreover, the Church was well established in Greenland in the twelfth century with several local churches, two monasteries, and an impressive episcopal residence, at which the assembly met in the fourteenth century.³⁹

The king’s realm as a unified community of law

The legislation of Magnus Håkonsson ‘Lagabøte’

Magnus Håkonsson’s ascension to the throne in 1263 was followed by extensive legislative reforms. King Magnus is therefore known to posterity as Magnus the

35 GtL § 200, NgL I: 71

36 Bøe 1961: 253

37 Boulhosa below: 174

38 F. Gad 1967: 134–38

39 Ibid. 138–50

‘lawmender’. His original plan was to revise the provincial codes. According to Knut Helle, *Frostatingsloven* from c.1260 bearing King Håkon’s name may have been intended as a first phase of such a reform project. By his side, Helle continues, King Magnus had a group of highly competent advisers who were trained in both Roman and Canon law.⁴⁰

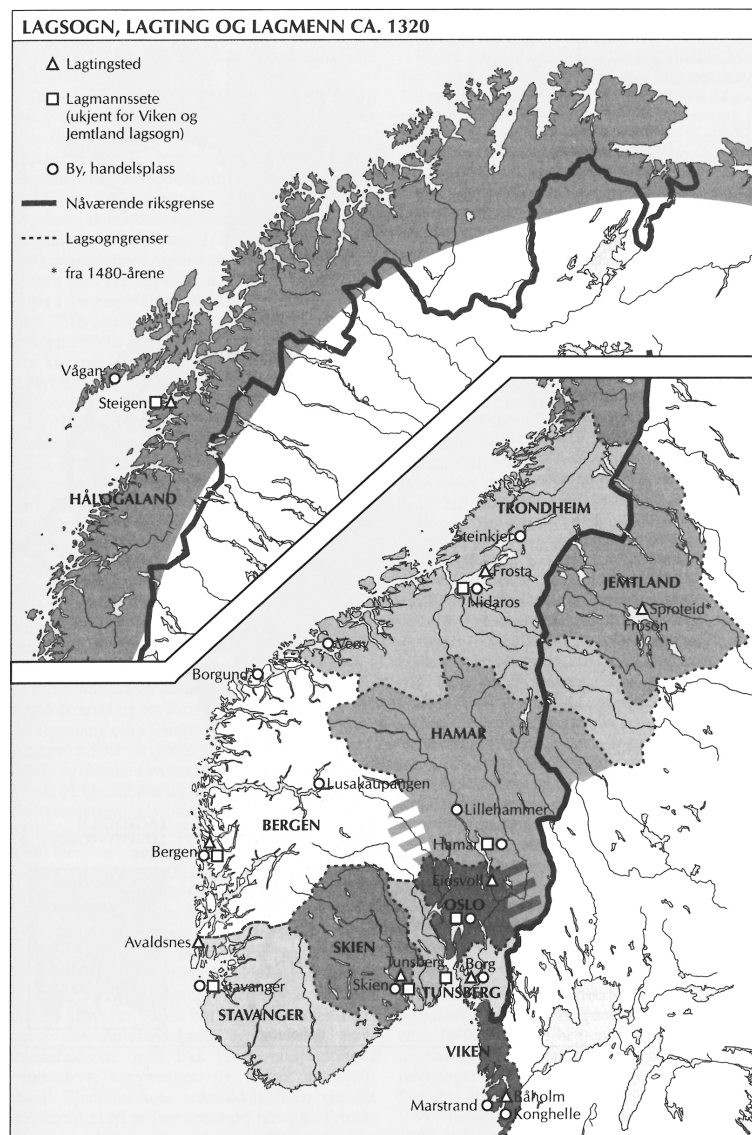
In the course of 1267 and 1268, the codes of Gulating and the eastern Norwegian law provinces (Eidsivating and Borgarting) were revised. The revision work also included the Christian laws,⁴¹ but when the turn came for *Frostatingsloven*, the king’s plans to revise the Christian law of Trøndelag were opposed by the newly appointed archbishop, Jon Raude. Consequently, King Magnus abandoned his original project; instead, he decided to make a single, unified code for all of Norway. *Landsloven* was codified by 1274, and within the next two years, it had been sanctioned by all four lawthings. In addition to *Landsloven*, King Magnus also saw to the codification of a town law for Bergen; this ‘*Bylov*’ was soon to be adopted by all of the large towns. Finally, all rules and regulations – both old and new – pertaining to the Crown, the national government, and the body of royal liegemen (‘*hirð*’) were collected in a separate code called *Hirdskræen* or *Hirdloven*. Unlike *Landsloven* and *Byloven*, *Hirdloven* applied to all of the king’s men, including his liegemen or vassals outside Norway. This was not a new arrangement, however. The Icelandic saga author Snorri Sturluson, who was a royal ‘lendmann’ (ON ‘*lendr maðr*’, baron), was assassinated on the order of King Håkon Håkonsson in 1241, formally because he had failed to abide by the rules of *Hirdloven*, but in reality because he was thought to be politically unreliable. Snorri had been the confidant of Skule Bårdsson, Håkon’s father-in-law, who was a pretender to the throne, and who declared himself king in 1240. Many Icelandic chieftains had become royal vassals or liegemen long before Iceland submitted to the Norwegian Crown in 1262. In Orkney and Shetland, the king had also long since established his own ‘*hirð*’.⁴²

The king, however, was not the only legislator; the archbishop too was a lawgiver in his province, which since 1152 included most of the Norse communities overseas, some of which were to become royal dominions only after 1260. It started with Archbishop Eystein Erlendsson, who in the 1170s issued letters to his Icelandic suffragans and the Icelanders to implement the ecclesiastical reforms

40 Helle 1974: 134–37.

41 Bjørg Dale Spørck 2009

42 Hødnebo and Magerøy 1979b: 153–56



Law provinces and lawmen seats c.1300. During the reign of King Håkon V Magnusson (1299–1319), Norway was permanently divided into lawmen districts (lagsogn), each with a lawman's court. Like the older provincial assemblies these new courts were called lawthing (lagting). However the older law provinces with their lawthings remained: Borgarting at Borg in southeast Norway, Eidsivating at Eidsvoll in east Norway, Frostating at Frosta outside Trondheim. Gulating, however, was moved from Gulen in Sogn to Bergen. Most of the new courts were located in the towns: Hamar, Oslo, Tønsberg, Konghelle, Skien, Bergen, and Trondheim.

and canon law.⁴³ The first provincial statute of the Nidaros church province has also been ascribed to Eystein.⁴⁴ And, after some slackening during the civil wars in Norway, the legislative activity of the archbishops recovered in the thirteenth century. It peaked between 1269 and 1351.

In many ways, Sweden follows the same pattern as Norway: first, provincial codes were established; these were then followed by a common code for the whole realm. However, these developments took place later in Sweden than in Norway. Laws that applied nationally did not really exist until King Magnus Birgersson's statutes were issued in the 1280s.⁴⁵ A common code ('*landslag*') for the Swedish realm – which bears the name of the Swedish-Norwegian king Magnus Eriksson – was not introduced until 1350. According to Gabriela Bjarne Larsson, the national code was a compilation and standardisation of existing provincial legislation and royal statutes. It was adopted across most of the realm in the course of the 1350s. A revised edition of *Landslagen* was issued in 1442. Again, the timing of Swedish national legislation reflects the late transformation of the Swedish monarchy to a state, while at the same time indicating that Sweden's make-up was a kind of alliance or confederation of provinces,⁴⁶ and the endeavours of the secular aristocracy to secure their economic and political interests. This last point applies above all to statutory legislation in the late Middle Ages, in which the Swedish Council of the Realm played a central role. This is addressed in depth by Larsson in chapter 4.

Denmark did not have a national code until 1683, during Christian V's reign. However, as Helle Vogt points out, in many respects *Jyske Lov* from 1241 had much of a land law character (chapter 5). The extent of legislation for the whole realm therefore is limited in Denmark compared to Norway and Sweden, and it primarily concerns the relationship between the Crown and the elites and the constitution of the realm – which largely corresponds to the areas covered by the Norwegian *Hirdskrå* and some of Håkon V's statutes.⁴⁷ And, according to Jens Olesen (chapter 6), the Danish kings unlike their Norwegian colleagues, did not have any ambition to introduce Danish laws in their conquered territories in the Baltic. Even

43 J.V. Sigurðsson 2003: 123

44 V. Skånland 1969: 168–85

45 Gabriela Bjarne Larsson 1994

46 Nils Blomkvist 2012

47 Most important in this respect is King Håkon's statute of 17 June 1308 which in fact is a comprehensive amendment to *Hirdskråen* (NgL II: 74–81); cf. Lars Hamre 1993. The main text of this statute is in an Icelandic manuscript (AM 351 fol, Codex Scalholtensis) from the late fourteenth century.

Estonia, which was incorporated in the Realm of Denmark, relied on feudal law inspired from Saxony and Livonia, while the city rights of Lübeck were introduced in Reval. Moreover, the constitutional situation in Denmark differed markedly from that of Norway as a consequence of the stronger and more independent position of the Danish aristocracy in relation to the Crown. However, after 1280, statutory legislation played a significant role in Norway too, with the difference that it covered both civil and administrative/constitutional matters. Additions to *Landsloven* are generally known as ‘retterbøter’ (corrective letters, amendments), whereas law regulations concerning the constitution, administration, and civil servants of the kingdom are called ‘skipan’ (statutes or ordinances), although the terminology is not entirely consistent.

The ‘skattlands’ are subjected to the king’s legislation

In 1262, the Icelanders had asked the king for new Icelandic laws. This request was met when King Magnus sent a new law book to Iceland in 1271. From the early 1300s, it was known by the name *Járnsiða*. In Magnús Már Lárusson’s view, it was an adaptation of the new *Gulatingsslov* from 1267 for Icelandic conditions, thus containing many features taken from Norwegian law.⁴⁸ Among other things, the law of succession to the throne of 1260, which defined the monarchy as hereditary, was hereby adopted in Iceland, along with the Norwegian penal code. According to Jón Viðar Sigurðsson, the Norwegian legal and administrative system – with lawthings (provincial assemblies), lawmen (royal judges), and sysselmen (sheriffs) – was introduced wholesale in Iceland in 1271–73. In chapter 11, he takes a closer look at this topic, with special emphasis on the new assembly arrangements.⁴⁹

Receiving their own version of the new *Gulatingsslov* in the same year as Iceland, the Faeroes also became part of the Norwegian community of law in 1271. Hans Jacob Debes claims that they reached an agreement with King Magnus that year, which corresponds to the settlement between Håkon Håkonsson and the Icelanders in 1262.⁵⁰

The next step was to introduce *Landsloven* to all of the king’s tributary lands and distant provinces. We have no certain dates for this process, but can assume that it was completed, for the most part, around 1300. More light has been shed on its adoption in Iceland than elsewhere, as the almost contemporaneous *Árna saga biskups* describes the introduction of both *Járnsiða* (1271) and *Jónsbók*

48 Magnús Már Lárusson 1962: 566–68

49 See also J.V. Sigurðsson 2010: 63ff

50 Debes 1995a: 39ff, cf. NgL IV: 353f; cf. RN II no. 92

(1281).⁵¹ Both reforms were met with heavy resistance. We shall return shortly to some questions of principle concerning the actual process of introducing the new codes.

It has been claimed that the issuing of the ultimate Icelandic code, *Jónsbók*, was not a matter of just transferring the Norwegian *Landslov*; rather, *Jónsbók* was a new code of law that was particular to Iceland. In a certain sense, this is correct, since much law material from *Grágás* found its way into the new code, which furthermore lays claim to being the law of the Icelanders. However, *Jónsbók* is based on *Landsloven*, as can be seen from section to section, chapter to chapter. The essential elements in *Landsloven* concerning the Crown and judicial matters are found unaltered in the new Icelandic code.

The legality of the Crown in Iceland after 1262 has been a matter of much discussion, with special focus on the so-called ‘sáttmáli’ (settlements) between the Icelanders and the Crown dated to 1262 and 1302. We shall let this debate lie; the point here is that the legal basis for the relationship between the Icelanders and the King of Norway was constituted by those two codes of law, and above all by *Jónsbók*, and the allegiance sworn to the king of Norway by the Icelanders in 1262, which was renewed by the acclamations of new kings until 1383. *Jónsbók* was to remain unaltered throughout the rest of the Middle Ages and into modern times. We may add that the sheer number of transcripts of the king’s law books, amendments, and statutes produced as the late Middle Ages progressed is an indication of the importance attributed to the law and judicial system the Icelanders shared with Norway. They even continued to make fresh copies of *Hirdskráen* at a time when it was becoming obsolete in Norway. In chapter 10, Lena Rohrbach examines an important aspect of this endeavour of copying and compiling law manuscripts in Iceland.

We don’t know exactly when *Landsloven* was introduced in the Faeroes, but it probably happened during the reign of Magnus the lawmender. In any case the famous *Seyðabrævið* (Sheep Letter) from 1298 refers to the law book which the Faeroes had received from King Magnus and which they had sanctioned at their ‘Alþingi’ (general assembly).⁵² *Seyðabrævið* made allowances for the nature of the economic life of the islands, which was based on hunting, fishing, and sheep-keeping and was to replace the older ‘bunaðarbolk’, which had been incorporated into the 1271 code. We are told that the Faeroes had asked Duke Håkon

⁵¹ Íf XVII

⁵² ‘[I] logbok þæiri er varr en virduligi herra Magnus konungr hinn kronadi gaf oss ok menn samþycktu a alþingi’ (NgL III: 34)

Magnusson to amend the old ‘bunaðarbolck’, and that he had commissioned the lawman of Shetland and the bishop of the Faeroes to draft the supplement to the Faeroese version of *Landsloven*.⁵³ In addition, there are two extant law books from the Faeroes dated to the early fourteenth century, the one in the Royal Library in Stockholm and the other in the library of Lund University.⁵⁴ They both contain *Landsloven* and *Seyðabrævið* in addition to many royal amendments and bear witness to the close connection between Bergen and the Faeroes. The Lund manuscript contains *Hirdskráen* as well.

The fact that the lawman of Shetland was trusted with the task of co-drafting the amendment to the Faeroese version of *Landsloven* suggests that the Shetlanders had already adopted the new law book. There is no extant law manuscript from Shetland, or for that sake from Orkney, but in late medieval diplomas, we find many references to *Landsloven*, which was abolished by Scottish authorities only in 1611.⁵⁵ According to Brian Smith, much of what has been written about Norwegian laws in Orkney and Shetland is tantamount to romantic fantasies. The ‘good old Udal law’ has been held up in contrast to Scottish feudal law, he says (chapter 7). Seeking to trace the legal tradition back to Norse times, Michael Jones takes a closer look at the very concept of Udal law in chapter 8.

Likewise, the people of Jemtland, who got their version of *Landsloven* at latest during Håkon V’s reign, were given their own separate statute on elk hunting. We are in the dark about Greenland, but since that country got a royal lawman we must assume that *Landsloven* – in some version or other – was introduced in this most remote corner of the king’s realm as well. The Greenlandic lawman might even have performed duties which normally belonged to a ‘sysselman’s’ office. For instance, we are told that he ordered the cleric Ivar Bårdsson to make an expedition to Vestri bygð to wipe out ‘skrælinger’ (i.e. local Eskimos). In the 1340s and 1350s – may be until 1364 – Ivar served as ‘officialis’ at Garðar during an episcopal vacancy. There was even a lawman’s residence in Greenland, namely Brattahlið, Erik Raude’s famous farm, which was also an important assembly site.⁵⁶

53 ‘Anlegr fader ok war hin kæraste win herra Erlendr byskup i Færøyum ok herra Sigurdr lagmadr af Hættalande sem ver hafðum till ydar sent tædo oss af almugans halfu vm þa luti sem þæim þotte vm bunadarbolken askorta’ (NgL III: 340)

54 Stockholm kgl. Bibl. C 20 and Lund UB MH 15; cf. NgL IV: 664f, 698–700. There is also a sixteenth-century copy of a law book from the Faeroes in the Royal Library in Stockholm (C 29 qv, NgL IV: 684ff). According to Knut Robberstad, the two Stockholm manuscripts today have the catalogue numbers Perg. 33 kv and Papp. 70 kv respectively (Robberstad 1967: 498)

55 Imsen 2012: 9–33

56 Finnur Jónsson 1930: 24f, 27, 28, 30; cf. Gad 1967: 156f, 170f, 172–74, 182–85

In other words, no later than 1319, all Norse countries in the west as well as the eastern and northern borderlands of Norway were united by a common code of law and a uniform legal system.

The king's control over his 'skattlands'

The opening lines of *Hirdskræen* declare that the king has the power to 'dictate and ban', i.e. both to command and prohibit. Whether this authority to command was universal or restricted to his liegemen is unclear, but given the context, it seems to be restricted to the latter.⁵⁷ In either case, in the tributary provinces, the king's men – which after 1260 meant more or less any royal representative or vassal – were legally obliged to abide by his commands.

The Norwegian hereditary monarchy had been adopted by law in Iceland – and probably also in the Faeroes – as early as 1271. It was confirmed in *Jónsbók*, which gives specific regulations for the royal succession identical with the provisions in *Landsloven*. In addition, *Hirdskræen* lists rules and regulations regarding how to go about the accession of a new monarch. Even the hereditary king had to go through ceremonial approval, and mutual allegiance was sworn – a ceremony known in Norway as 'konungstekja' ('the taking of the king'). Delegates from all of the Norwegian law provinces participated in 'konungstekja'. Local ceremonies in the tributary provinces then followed in which the new monarch was approved and mutual allegiance was sworn by proxy through representatives sent by the king. And, although the question of succession was regulated by law, the formal approval gave the king's subjects overseas an opportunity for negotiations, as evidenced in the source material from Iceland. Thus, it often took a year or two before the ceremony went ahead in the provinces, at least in Iceland's case.

We have no certain knowledge about how this was done in the other 'skattlands'. However, in 1381, the Jemtlanders showed up in Trondheim for confirmation of their provincial privileges.⁵⁸ The distance across the mountains was sufficiently short to enable them to turn up for the allegiance ceremony in Trondheim. It is unlikely that they participated in the Norwegian 'konungstekja', however. In chapter 13, Helgi Þorláksson shows that in all likelihood such allegiance ceremonies to celebrate the succession of a new king were no longer held in the tribu-

⁵⁷ *Hirdloven*: 64f: 'J þess hins sama vars herra iesu krist nafne skal var loglegr noregs konongr hans þion ráða boðe oc banne oc vtforum varom innan lanz oc vttan guði til ðyrðar seer til sòmðar os til gagns oc þarfenða.'

⁵⁸ NgL III: 213

tary provinces when King Olav IV Håkonsson's reign expired (1387), due to the emergence of the Norwegian Council of the Realm as an intermediary between the tributary provinces and the unified Crowns of the Nordic realms.⁵⁹ This can be evidenced in the royal accessions after 1450, when Norway also became an elective monarchy and the Council of the Realm was given the authority to elect a monarch on behalf of both Norway and the tributary lands.

Due to the Prologues in *Jónsbók* and *Landsloven*, which except for the address are identical, the king alone had legislative authority in his realm. This authority, however, was not akin to that of the absolute rulers in the seventeenth and eighteenth centuries. The Norwegian kings were not sovereign with regard to legislation in the Middle Ages, but they were responsible for making and improving the laws. According to *Jónsbók* and *Landsloven*, King Magnus had been given a mandate from the lawthings to make new codes, which had to be sanctioned by the assemblies of the law provinces to become valid.

This sanctioning authority might have been an empty formality in Norway, as Knut Helle holds, though it was necessary. In Iceland, however, we positively know that the assent was political reality. Both in 1271 and 1281, the introduction of the king's codes took place amid campaigns and protests. These are thoroughly described in the *Árna saga biskups*. When the royal envoy Lodin Lepp in 1281 demanded that the Icelanders must accept the king's code before they could ask for some exceptions by royal grace, he was told in no uncertain terms that this was not the way things worked in Iceland. Lodin had no choice but to enter into negotiations with the Icelanders about the new code – negotiations which later continued in Norway. We also see that the Icelanders were consulted during the preparation of amendments to *Jónsbók* during the reigns of both Erik Magnusson (1280–99) and his successor, Håkon V Magnusson (1299–1319). Although a more monarchical view of the king's legislative authority, as well as of his authority

59 After the death of King Olav, the succession was disputed both in Denmark and Norway. In addition, in Sweden, a powerful group of magnates rebelled against King Albrecht. Albrecht was next in line for the Norwegian throne, but Olav's mother, the Dowager Queen Margrete, wanted to secure the royal succession in Denmark and Norway for her own next of kin. Her candidate for the throne was her great nephew (son of her sister's daughter) Bugislav of Pomerania, who was proclaimed hereditary King of Norway in 1389 under the name Erik. The following years were therefore marred by conflict between the two dynasties over the succession to the thrones of Sweden and Denmark. In the end, Erik succeeded to both thrones in 1395/96, thus uniting Denmark, Norway, and Sweden under a single monarch. In 1397, a union between the three Nordic realms was formalised in Kalmar, and Erik was crowned union king. The union would be everlasting, according to the treaty bearing the town's name.

in general, gained ground especially during Hákon V's reign, the king was still forced to listen to the arguments voiced by the Icelanders and take their opinions into account when he made his decisions. Whether this was also the case in the other tributary provinces remains in the dark, but we see that at least in Iceland, the population was able to influence the way the king exercised his legislative powers. In the Faeroes too, the code was sanctioned at the 'Alþingi', but there is no mention of disagreements or protests.

In 1271, the king obtained a monopoly on punishing crimes in Iceland and the Faeroes. With the introduction of *Landsloven*, this applied to all of the tributary provinces. Large fiscal interests were linked to the king's punishing authority, especially with regard to the penal fines imposed in cases of manslaughter and other grave acts of violence, as well as attacks on the authorities. These fines went straight into the king's treasure chest; fines for minor offences on the other hand went into the pockets of the king's local representatives. In Iceland, the introduction of a royal penal code was a clear breach with long-standing traditions. The fact that family revenge and self-defined justice were abolished helped to undermine the old chieftain rule. Norwegian rules of process were also introduced no later than 1308, and the process for murder cases was centralised under the king's chancery in Oslo.⁶⁰ Hence, convicted killers had to present themselves to the Norwegian chancellor within three years of the conclusion of the case in Iceland.⁶¹ Against hard cash the convicted felon could be granted the king's peace, i.e. lasting legal protection – if the crime qualified for such pardon.

The Icelandic chiefdoms disappeared after 1262 as a consequence of the reforms, but the weaponry and heroic lifestyles of ancient times continued to inspire works of literature; hence, in a sense, the chieftains live on. And the literary descriptions are not purely a matter of fiction and nostalgia. Letters from the 1400s seem to indicate a revitalisation of traditional Icelandic feuding culture. Some have even claimed that a state of anarchy prevailed in Iceland during parts of the fifteenth century, but in reality, the situation was somewhat less serious. Violent crimes were still prosecuted, and the perpetrators had to be answerable for their transgressions. It was in the financial interest of the king and his men to pursue the offenders. One of the most prominent Icelanders at the time, Guðmundur Arason, had to fork out enormous sums to pay for his wrongdoings. The list of items and properties of which his sentence deprived him fills twelve pages in the *Diploma-*

⁶⁰ Imsen 2009

⁶¹ DI IV: 8f

tarium Islandicum.⁶² Thus, even in the midst of chaos, government and judicial system prevailed. Hans Jacob Orning expands on the contrasts of this period in the social and cultural life of Iceland in chapter 12.

The monarch's right to levy taxes was also established by law. Taxation is a primary concern in *Jónsbók*'s chapter on the obligations of the king's subjects. But the rules of taxation were so narrowly defined by the law that there was little room for manoeuvre left for the monarchs. Hákon V's attempt in 1305 to increase his share of the tax revenue failed due to opposition from the Icelanders. The Crown therefore had to look elsewhere for opportunities to increase its revenues from Iceland. This meant that the possibility embedded in the regal rights (*jura regalia*) had to be exploited by the monarchs – above all, the right to levy taxes on trade. Such a customs regime had not been included in the code for Iceland, however, and was not put in place until the reign of Magnus Eriksson in the 1320s.⁶³ Unlike the Norwegians, the Icelanders were exempt from the duty of 'leidang', i.e. the duty to participate in the naval defence of the realm. We must assume that the other tributary provinces enjoyed the same exemption. Inland-area Norwegians were also exempt from having to participate in the navy, and during the reign of Hákon V, a tax, the so-called 'vissøre', was introduced to compensate for this.⁶⁴ Furthermore, we see that fines and taxes were important sources of income from the Orkney Islands. Thus, the authority to legislate, punish, and levy taxes formed the legal basis of the Crown's power in the tributary provinces. The king's code made the inhabitants of the tributary provinces his subjects. Until then, they had been under the rule of earls and kinglets or they had accepted to be clients of chiefs.

The 'skattland' community

With the king's laws came a royal administration and a royal court apparatus, which in the case of Iceland were introduced in 1271. In the Faeroes and Shetland, we know that the office of royal 'sysselman' (governor/sheriff) was introduced much earlier. In Orkney, a royal 'sysselman' was found on a sporadic basis from the late 1190s. Greenland too got its 'sysselman'; we don't know when, but there is documentary evidence that such a royal ombudsman was at work in Eystri bygð in the fourteenth century.⁶⁵ No lawmen are mentioned in these island communities until the introduction of *Landsloven*.

62 DI IV: 682, 683–94; VII: 7; Björn Þorsteinsson 1998: 85

63 Helgi Þorláksson 2010: 149–74

64 Rindal 1976: 168ff

65 Gad 1967: 156f, 184f.

The fighting over the new positions of power affected Iceland's history from the moment they were created: Were the offices to be held by Norwegians, or should the Icelanders be allowed to govern their own country on behalf of the king? The topic of home rule and native privileges was particularly controversial during the reign of King Håkon V. So was the issue of submitting court decisions made in Iceland to review by foreign (i.e. Norwegian) instances. Broadly speaking, after 1320, Iceland was governed by Icelanders in the name of the king, although the question of native men's right to hold royal offices, including that of the governor ('*hirðstjóri*'), was still relevant in the 1370s. Protests against being governed by foreigners also occurred in the other tributary provinces. In 1369, for example, the Orcadians demanded that native men of the land must be involved in all local matters pertaining to the Crown and the Church. This was still their position in 1425, by which time the Norwegians and the Swedes had also started to object to all the foreign bailiffs displacing their own men as servants of the united crowns.⁶⁶

Seen from the perspective of the tributary provinces, the introduction of new judicial structures was probably the most important change. The provinces were given their own lawman; Iceland got two, and a lawthing. In Iceland, however, the old name '*Alþingi*' (general assembly) was retained.

Like Iceland, the Faeroes had a so-called law-speaker from old, and since a Faeroese lawman is not mentioned in connection with the *Sheep Letter* in 1298, we cannot rule out the possibility that the Faeroes still had no lawman of their own at that date, though a royal judge was probably at work at latest during the reign of Håkon V Magnusson. It also took some time before a lawthing in accordance with the regulations in *Landsloven* was in place in the Faeroes and Jemtland. According to Hans Jacob Debes, a Faeroese lawthing was established sometime between 1274 and 1298, and most probably in 1274.⁶⁷ However, we cannot know for certain when a lawthing with local deputies replaced the age-old '*Alþingi*'. Regulations for payment of the delegates to the Faeroese lawthing date from the late fourteenth or the early fifteenth centuries only.⁶⁸ Nevertheless, all '*skattlands*' got a general assembly ('*landsting*') of some kind. The main theme in the political development of the '*skattlands*' from the late 1200s onwards is the communalisation of local public life. In other words, lawman, lawthing, and law book came to be the pillars of the new provincial communities. By the early 1400s (or possibly earlier), most of the tributary provinces also had an '*army*' of '*lawrightmen*'; these were laymen authorised by the lawman to operate as jurors.

⁶⁶ S. Imsen 2012.

⁶⁷ Debes 1995b: 37.

⁶⁸ DF: 27f

In fact, the new 'skattland' communities were authorised during the reign of Håkon V. The authorisation took the shape of a community seal issued by the king, which bestowed upon the community the legal right to act on behalf of the people of the province. The seal of Jemtland is most commonly known today. It depicts the Norwegian lion holding St. Olav's axe, flanked by two shield bearers and two squirrel hunters (see the cover of this book). The latter is a reference to the fur-hunting of the Jemtlanders: The fur tax was the Norwegian king's main source of revenue from Jemtland. The seal of Orkney has a similar motif. Probably Iceland as well got its own seal with lion and axe.⁶⁹

It is unlikely that King Håkon's intention was to forego his royal dominion over the tributary provinces through the creation of self-governed communities. However, how could the king of Norway rule these lands without participation from his new subjects? The distances were enormous; communication and transport posed great challenges. Moreover, we should keep in mind that these lands had not been conquered. The king's rule rested on legitimacy and consensus.

Nevertheless, royal control over administration and judicial matters in the tributary provinces was relatively strong up to 1319. The king sent frequent envoys to Iceland, and probably also to the other provinces. A letter issued by the lawthing of Shetland in 1299 gives the impression of a continuous influx of royal envoys.⁷⁰ This was not to last, however. In the late Middle Ages, the Norse provinces in the west – as well as Jemtland in the east, which was treated in more or less the same way as the tributary provinces – emerged increasingly as self-governed corporations based on a shared body of laws that was supplemented with legislation adapted to the needs of each province (or area), and their long-standing customs and traditions.

Despite Norway's increasing involvement in Nordic politics after 1319, which culminated in inclusion in the Kalmar Union at the close of the century, the political and judicial system created by the monarchy in the tributary provinces survived the Middle Ages and continued into the modern era.⁷¹ Hence, the overarching picture is that by the close of the 1300s, the Norwegian domination had taken on the character of a commonwealth rather than an empire.

69 H. Trøtteberg 1965: 262–75; B.E. Crawford 1978 and 1979

70 DN I no. 89

71 Imsen 1999: 53–65; idem. 2006: 61–85

Bibliography

- Andersen, Per Sveaas, Nordisk innvandring, bosetning og samfunnsdannelse på Isles of Man i middelalderen, *Collegium Medievale*, vol 8 (1995): 5–50
- Bately, Janet & Anton Englert (eds.), *Othere's Voyages. A late 9th-century account of voyages along the coasts of Norway and Denmark and its cultural context*, Roskilde 2007
- Björn Þorsteinsson, *Saga Íslands*, vol. 5 ed. Sigurður Línal, Reykjavík 1990
- Blom, Grethe Authén, Told, *Kulturhistorisk leksikon for nordisk middelalder*, vol. XVIII, København 1974: 439f
- Blomkvist, Nils, The skattland—a concept suitable for export? The role of loosely integrated territories in the emergence of the medieval state, in S. Imsen (ed.), *Taxes, tributes and tributary lands in the making of Scandinavian kingdoms in the Middle Ages*, Trondheim 2012
- Bull, Edv., *Det norske folks liv og historie gjennom tidene*. Vol. 2: Fra omkring 1000 til 1280, Oslo 1931
- Bøe, Arne, Hauld, *Kulturhistorisk leksikon for nordisk middelalder*, vol. VI, København 1961: 251–54
- Crawford, Barbara E., The Orkney Arms, *Orcadian*, July 13 (1978)
- , The Shetland Lawthing Seal, *New Shetlander*, July 12 (1979)
- Debes, Hans Jacob, Færøerne og Norge. En tusindårig forbindelses begyndelse, forløb og afslutning, *Historisk tidsskrift*, vol. 74 (1995a): 22–56
- , *Føroya søga II: Skattland og len*, Tórshavn 1995b
- DI = *Diplomatarium Islandicum (Íslenzk fornbréfasafn)* I–XVI, eds. Jón Sigurðsson et al., København & Reykjavík 1857–1972
- DF = *Diplomatarium Færoense. Føroyskt fodnbrævasavn* I: Miðalaldrbrøv upp til trúbótarskeiðið, v. Jakob Jakobsen, Tórshavn and København 1907
- DN = *Diplomatarium Norvegicum* I–XXIII, Christiania/Oslo 1849–2011
- Eithun, Bjørn, Rindal, Magnus & Tor Ulset, *Den eldre gulatingsslova*, Oslo 1994
- Finnur Jonsson, *Det gamle Grønlands beskrivelse af Ívar Bárðarsson*, København 1930
- Fix, Hans, Grágás, *Medieval Scandinavia. An Encyclopedia*, New York & London 1993: 234f
- Gad, Finn, *Grønlands historie*. Vol. 1: Indtil 1700, København 1967
- Gunnar Karlsson et al., *Grágás*, Reykjavík 2001
- Hagland, Jan Ragnar & Jørn Sandnes, *Frostatingslova*, Oslo 1994
- , *Bjarkøyretten, Nidaros eldste bylov*, Oslo 1997

- Hamre, Lars, Litt omkring Håkon Vs hirdskipan 17. juni 1308, *Historisk tidsskrift*, vol. 72 (1993): 6–36
- Helgi Þorláksson, King and Commerce. The foreign trade of Iceland in medieval times and the impact of royal authority, in S. Imsen (ed.), *The Norwegian Domination and the Norse World c.1100–c.1400*, Trondheim 2010: 149–74
- Helle, Knut, *Norge blir en stat 1130–1319*, Bergen, Oslo, Tromsø 1974
- , *Gulatinget og gulatingsslova*, Leikanger 2001
- Hirdloven = Steinar Imsen ed., *Hirdloven til Norges konge og hans håndgangne menn*, Oslo 2000
- HN = *Historia Norwegie*, v. Inger Ekrem & Lars Boje Mortensen, København 2003
- Hødnebo, Finn og Hallvard Magerøy, *Sverres saga, Norges kongesagaer III*, Oslo 1979a
- , Håkon Håkonssons saga, *Norges kongesagaer IV*, Oslo 1979b
- Íf = *Íslenszk fornrit*
- Íf I = *Íslendingabók*, Reykjavík 1986
- Íf XVII = *Biskopa sögur III*, v. Guðrún Ása Grímsdóttir, Reykjavík 1998
- Íf XXV = *Færeyinga saga*, ed. Ólafur Halldórson, Reykjavík 2006
- Imsen, Steinar, Public Life in Shetland and Orkney c.1300–1550, *New Orkney Antiquarian Journal*, 1 (1999): 53–65
- , Det norske grenselandskapet Jemtland, in Harald Gustafsson & Hanne Sanders (eds.), *Vid gränsen. Integration och identiteter i det förnationella Norden*, Göteborg & Stockholm 2006: 61–85
- , Den gammelnorske drapsprosessen, *Historisk tidsskrift* vol. 88 (2009): 179–229
- , The Country of Orkney and the Complaints against David Menzies, *New Orkney Antiquarian Journal*, 6 (2012): 9–33
- Jón Viðar Sigurðsson, The Norse Community, in S. Imsen (ed.), *The Norwegian Domination and the Norse World c.1100–c.1400*, Trondheim 2010
- Jónsbók. Kong Magnus Håkonssons lovbog for Island vedtaget på Alltinget 1281 og De for Island givne retterbøder af 1294, 1305 og 1314, ed. Ólafur Halldórson, København 1904/1970
- Jørgensen, Jens Ulf, Landskabslove, *Dansk kulturhistorisk Opslagsværk*, vol. I, eds. Erik Alstrup et al., København 1991: 555–57
- Landau, Peter, Canon Law in the Periphery of Europe. The Example of Eystein, in Tore Iversen (ed.), *Archbishop Eystein as Legislator. The European Connection*, Trondheim 2011: 57–72
- Larsson, Gabriela Bjarne, *Stadgelagstiftning i senmedeltidens Sverige*, Lund 1994

- Magnús Már Lárusson, Járnsiða, *Kulturhistorisk leksikon for nordisk middelalder*, vol. VII, København 1962: 566–68
- NgL = *Norges gamle Love indtil 1387*, 1–5, Christiania 1846–95; 2nd series (1388–) 1–4a, Christiania/Oslo 1912–95
- Ólafur Lárusson, Grágás, *Kulturhistorisk leksikon for nordisk middelalder*, vol. V, København 1960: 410–12
- Oram, Richard, Ouncelands, Quarterlands and Pennylands in the Western Isles, Man and Galloway: Tribute Payments and Military Levies in the Norse West, in S. Imsen (ed.), *Taxes, tributes and tributary lands in the making of the Scandinavian kingdoms in the Middle Ages*, Trondheim 2011: 57–76.
- Power, Rosemary, Meeting in Norway: Norse-Gaelic relations in the kingdom of Man and the Isles, 1090–1270, *Saga-Book XXIX* (2005): 5–66
- Rindal, Magnus, Viseyrir, *Kulturhistorisk leksikon for nordisk middelalder*, vol. XX, København 1976: 168ff
- RN = *Regesta Norvegica* I–IX, Oslo 1989–2010
- Robberstad, Knut, Odelsrett, *Kulturhistorisk leksikon for nordisk middelalder*, vol. XII, Copenhagen 1967: 493–99
- , *Retts saga I*, Oslo 1976
- Sandnes, Jørn, *Ødetid og gjenreise. Trøndsk busetningshistorie ca. 1200–1660*, Oslo, Bergen, Tromsø 1971
- , Germanisches Widerstandsrecht und die Schlacht bei Stiklestad 1030, in *Mare Balticum. Beiträge zur Geschichte des Ostseeraums in Mittelalter und Neuzeit. Festschrift zum 65. Geburtstag von Erich Hoffmann*. Sigmaringen 1992: 64ff.
- Skånland, Vegard, *Det eldste norske provinsialstatutt*, Oslo, Bergen, Tromsø 1969
- Smith, Brian, Shetland in Saga-Time: Rereading the Orkneyinga Saga, *Northern Studies*, vol. 25 (1988): 21–41
- , On the nature of things: Shetland's law courts from the middle ages until 1611, *The New Shetlander*, 250 (2009): 37–45
- , Hákon Magnusson's root-and-branch reform of public institutions in Shetland c.1300, in S. Imsen (ed.), *Taxes, tributes and tributary lands in the making of Scandinavian kingdoms in the Middle Ages*, Trondheim 2012
- Spørck, Bjørg Dale. *Nyere norske kristenretter*, Oslo 2009
- Sverrir Jakobsson, Defining a Nation: Popular and Public Identity in the Middle Ages, *Scandinavian Journal of History*, 24 (1999): 99–101
- Trætteberg, Hallvard, Landskapsseg and Landskapsvåpen, *Kulturhistorisk leksikon for nordisk middelalder*, vol. X, København 1965: 262–75

Chapter 2: The introduction of a law of the realm in northern Norway

Miriam Tveit

The incorporation of the northernmost parts of Norway into a nation-wide community of law at the end of the thirteenth century speaks of political consolidation within the realm of Norway in the High Middle Ages. A common civil code for the whole realm replaced the older provincial laws of Trøndelag (Frostating), western Norway (Gulating) and south-eastern and central-eastern Norway (Borgarting and Eidsivating) during the reign of Magnus Håkonsson the lawmender (1263–80). His code of the realm – the so-called *Landsloven*, aimed at strengthening the unity of the realm, and should be seen as part of a comprehensive state formation project. The question is: How was *Landsloven* introduced in Hålogaland and Finnmark, which historically were the northernmost parts of Norway, and how was it received among the northern population? Moreover, did the new royal code have the intended political effect?

Scarcity of written evidence has led to several interpretations of the legal system in the north prior to as well as after the introduction of *Landsloven* in northern Norway. However, many scholars held that these parts were subject to the jurisdiction of Frostating long before the 1270s. We should keep in mind that historic Finnmark, which comprised parts of present-day Troms, and the Kola Peninsula made up a kind of frontier between Norway and Novgorod (Russia) until the nineteenth century, even though a first attempt to fix borders and regulate taxation was made in 1327. From the end of the thirteenth century, Sweden too expanded into northern Fennoscandia. Unlike Finnmark, Hålogaland had been considered an integral part of the land of the Norwegians (ON *Norðmanna land*) at latest since the early Middle Ages.¹ The question is how and to what extent it also would become a part of the monarchic state during the Middle Ages.

The economy relied mainly on fishing. The grand fishing banks of Lofoten were significant in Hålogaland. People from all over the coastal north gathered there

¹ J. Bately and A. Englert 2007

every winter to take part in the fishing and the stockfish industry. We can deduce from different sources that this annual fishing was taxed by Norwegian kings from the early eleventh century.² Trade in stockfish placed the population along the northern coast in a network of export to the continent, which from the mid thirteenth century was dominated by the German merchants in Bergen.

Hålogaland covered quite a long, if not wide, geographical area. In both Hålogaland and Finnmark, at least two ethnic groups coexisted: the Sámi and the Norwegians. Both groups seem to have been involved in the coastal economy and small-scale farming.³ In addition, nomadic or semi-nomadic groups followed routes in the region and between the territories of the secular authorities that asserted power in the northern cap.⁴ Hålogaland probably had a lower population density than the Norwegian southern mainland, and Finnmark had very few permanent inhabitants. The combined population of nomads and permanent inhabitants in Finnmark would also have been a fraction of that in Hålogaland.⁵

The legal system of Hålogaland from the thirteenth to the fifteenth centuries

Like the tributary lands in the Atlantic, the northernmost parts of Norway were peripheral as seen from the centre of the realm, geographically isolated from the south by land, although closely connected by the coastline. Geography and demography may be the reason why Hålogaland and coastal Finnmark seem to have been integrated into the new state later than other parts of the king's Norwegian realm.

There are no surviving copies of *Landsloven* addressed to a provincial assembly in Hålogaland. Neither is there any definite evidence of a separate provincial law for Hålogaland prior to 1274. This resembles the situation in the eastern border-province of Jemtland. There too the question of a separate provincial law has been raised, though with no final answer.⁶ Finnmark never became part of the jurisdictional fabric of the realm in the Middle Ages – except for some pockets of Norwegian settlement along the coast.

The issue of a separate provincial law for Hålogaland leads to several related questions: Did Hålogaland have its own lawthing, like the four law provinces in southern Norway (Frostatingslagen, Gulatingslagen, Borgartingslagen and Eidsi-

² Bjørge 1982, Tveit 2011: 56–58

³ Berthelsen 2011: 79, 84

⁴ Hansen 2011

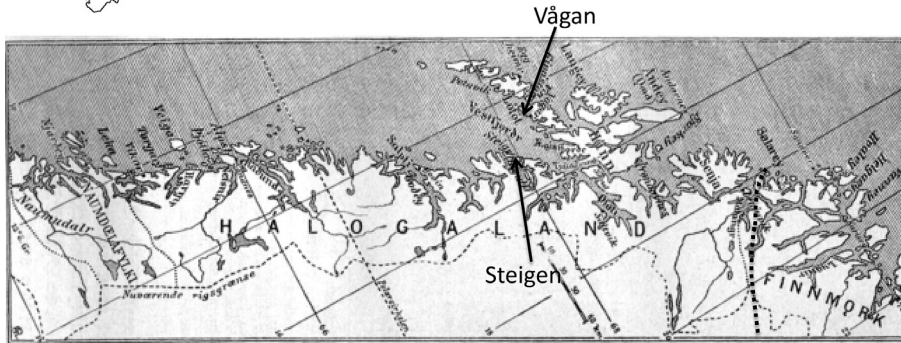
⁵ Nielssen 1994: 25

⁶ See Robberstad 1963: 192 and Njåstad forthcoming 2014



Map of Hålogaland and Finnmark in
the Middle Ages

Ivar Refsdal 1910



Hålogaland and its border with Finnmark.

vatingslagen)? And if so, where was the provincial assembly situated? If we examined the northern region in the light of the other law provinces, the provincial court would traditionally have its own lawman and a system of local representatives.

A separate lawthing for Hålogaland occurs in the sources only in the fifteenth century.⁷ The question is whether Hålogaland had obtained status as a law province of its own rather recently or whether it had held such a status for a while, and in that case, for how long. Furthermore, did a provincial court in Hålogaland have a royal judge, i.e. a lawman? Or, reversely, could there have been a lawman without a lawthing? And, did the introduction of *Landsloven* have any consequences for Hålogaland as a law province?

The lack of evidence for a separate provincial assembly in the north gives the impression that Hålogaland had been under the jurisdiction of Frostating until the 1270s.⁸ On the other hand, sources that list the representatives to the provincial assembly in Trøndelag do not mention any representatives from Hålogaland. This fact combined with other factors has led to the conclusion that Hålogaland might have had its own provincial assembly after all,⁹ or that there might have existed

⁷ Falkanger 2007: 58–59

⁸ Ibid. 48

⁹ For instance, Storm 1877: 63, Taranger 1930: 15, Seip 1934: 30–31. See summary of the discussion in Falkanger 2007: 24–27

an assembly in Hålogaland which was subordinate to Frostating until 1274, and which obtained a status as a lawthing after the introduction of the new code.¹⁰

Two locations in Hålogaland stand out as natural choices for a provincial assembly, prior to as well as after 1274. They are Steigen in the mainland and Vågan in the Lofoten archipelago. Geographically, Steigen and Vågan are positioned directly opposite each other, with not more than half a day of sailing on each side of the *Vest fiord* in central Hålogaland. Steigen had been a prominent chiefdom since the early Middle Ages, while Vågan had become the most important centre of trade in northern Norway in the twelfth century and had developed town-like structures.¹¹ Vågan should also become a meeting place for the provincial clergy; a ‘prestestefna’ was summoned there every year.¹² Vågan’s importance as a meeting place for fishermen, tradesmen and the clergy makes it a natural choice for a provincial court. Steigen too held high status as an ecclesiastical centre, with its twelfth-century church as a common meeting place in the region.

However, the functions of these two almost neighbouring places are not clear to us before c.1300. Both appear as important public places. Written evidence, however, gives the impression that the assembly in Vågan had prominence in the region up to c.1295, while Steigen seems to have taken over the dominant role as a public centre in the late Middle Ages.¹³ Steigen kept its prominence throughout the late Middle Ages and the early modern period. Vågan, on the other hand, sank into oblivion.¹⁴ Further north, in the Vesterålen archipelago, the canonry of Trondenes gained importance in the late Middle Ages. The church there was the biggest and most important stone construction in all of northern Norway. It was a collegiate church which was annexed to the dean at the cathedral chapter in Trondheim. The Trondenes canonry was a great landowner and the dean was involved in the very lucrative stockfish trade.¹⁵ Trondenes church was built in the twelfth century and should pursue missionary activities among the Sámi as well as taking care of the interest of the archbishops of Trondheim.¹⁶ Trondenes would later on become a site for a so-called ‘fylkesting’, i.e. a regional court.¹⁷

10 For instance, Brandt 1883: 163ff, Bjørge 1982: 51

11 Bjørge 1982: 45

12 Falkanger 2007: 54–55, Bjørge 1982: 48–49, DN III: 36

13 Bjørge 1982: 50–51, Falkanger 2007: 50–79

14 Bertelsen 2009: 199–211

15 Hansen 2003: 261–269

16 Hansen 2003: 258

17 Eriksen 1956: 460–61.

Of course, there were conflict-solving institutions in Hålogaland earlier. An Icelandic eleventh-century source tells us that a man from Bjarkøy was outlawed for homicide by an unknown local assembly.¹⁸ The institution of outlawry for homicide is known also from the provincial laws in southern Norway.¹⁹ The political status of Hålogaland seems to have been in the hands of residing aristocratic families, which have led some scholars to argue that jurisdiction up north primarily was the business of the chieftains in earlier times, very much like the ‘godar’ system in Iceland.²⁰ One of the most prominent aristocratic families was the Bjarkøy family, close to the Tronden church, who around 1300 counts some of the most prominent men in the inner circle at the royal court.

We have two sources mentioning lawmen connected to Hålogaland. Bjarne Mårdsson, who attended a meeting of Gulating c.1200, is referred to as a lawman from Hålogaland.²¹ He was married into the powerful Bjarkøy family. However, Bjarne was not necessarily operating as a lawman in Hålogaland. According to the saga of Håkon Håkonsson, Bjarne represented Trøndelag, which means that he probably was connected with Frostating.²² The hypothesis that Hålogaland was part of the law province of Frostating is moreover strengthened by the detailed narrative of the conflict between King Sigurd Magnusson the Crusader and the prominent chief Sigurd Raneson at Steigen in the early twelfth century. Their case was at first tried at a local court in Trondheim, from where it was passed on to a local court at Kjefsøy in Lofoten, and from there again to the ‘fylkesting’ at Tronden. Finally it was sent back to Trondheim where the conflict was settled at Eyrating.²³

Almost hundred years later, in 1303, we meet Ivar (surname unknown) called lawman of Hålogaland as the secretary at a meeting in Tønsberg.²⁴ That Ivar calls himself lawman of Hålogaland may indicate that a provincial court was operative in the province at this time. We cannot rule out that the king in the wake of the introduction of *Landsloven*, and most probably during the reign of Håkon V Magnusson, appointed a judge to Hålogaland and even established a provincial court, as a stage in expanding royal jurisdiction over the northern parts of his realm. It is well known that King Håkon, the youngest son of Magnus the lawmender, carried through a court reform in the early 1300s. The historian Jens Arup Seip

18 *Landnámabók*: 214, Nielssen 2012: 128–29

19 For instance, *Gulatingssloven* (G): G.150–71, and *Frostatingsloven* (F): F.IV: 39

20 Eidnes 1956: 560–65, Taranger 1934–36: 275

21 Eidnes 1956: 562, Helle 2001: 47, NgL I: 104–10, G.316–20

22 *Håkon Håkonssons saga*: 86

23 Storm 1877

24 Norges gamle Love III: 62 n. 27. See Sunde 2008: 103 for a more detailed discussion of the role of Ivar

counts a lawman's tribunal in Hålogaland among a series of similar courts established by king Håkon.²⁵ On the other hand, Jemtland, the eastern border province to Sweden, got a royal lawman too, but no lawthing or lawman's tribunal was established there before the end of the fifteenth century. The Faeroes had a lawman as well but no lawthing until c.1400.

Magne Njåstad has argued that the lawman in Jemtland was ambulant, even though he often met at the annual fairs at Frösöen.²⁶ The plural centralities in the large region of Hålogaland, as Trondenes, Steigen and Vågan signify, could opt for an ambulant lawman there as well. The law historian Fredrik Brandt too came to the same conclusion, with the argument that the lawthing is presented in plural form in sources.²⁷ The same suggestion has been put forward by the lawyer Aage Thor Falkanger.²⁸ A more likely explanation is that Hålogaland did not have any provincial court of its own from the outset; instead there existed regional courts with lawthing-like status *de facto*, though subordinated to Frostating in Trøndelag *de jure*. These courts might have been called 'fylkesting' or 'fjerdingssting'. Thus the assemblies in Vågan and Trondenes or elsewhere would be regional centres of jurisdiction until the fourteenth century; in particular cases only would the involved parties be referred to Frostating in Trøndelag. Only in the early 1400s did the lawman of Hålogaland get a permanent residence, Steigen, where the provincial court was located as well. From then on, his court is referred to as a lawthing.²⁹ The Norwegian population along the coast of Finnmark may have been formally answerable to the lawman of Hålogaland at latest from 1384, due to a royal amendment.³⁰

What did *Landsloven* replace in northern Norway?

Since Hålogaland probably belonged to the jurisdiction of the provincial court in Trøndelag, the population in the north would be subject to *Frostatingsloven*. However, in a protocol from an ecclesiastical court in Trondheim in 1291, a so-called *Vågabók* (Book of Vågan) occurs.³¹ We are told that Bjarne Erlingsson of Bjarkøy, one of King Erik's councillors, in 1282 at a meeting in Vågan had

25 Seip 1934: 116

26 Njåstad forthcoming 2014

27 Brandt 1883: 183

28 Falkanger 2007: 63

29 Schøning 1930: 181, Falkanger 2007: 59–63

30 Regesta Norvegica (RN) VII: 1191

31 DN III: 30

proclaimed that *Vágabók* was invalid since ‘the king would not have more than one law book in the land’.³²

Vágabók is a mystery, and there are several theories of what it might have been. The Norwegian historian Jens Arup Seip concluded, on the grounds of Bjarne Erlingsson’s proclamation, that *Vágabók* was still the prevailing law in Hålogaland in 1282, and that Vågan was the main hotspot in the province.³³ Another Norwegian historian, Narve Bjørge, has suggested that *Vágabók* was some sort of a merchant by-law valid for the fair or marketplace only.³⁴ He also suggested that *Vágabók* might have been a local version of the old town law of Trondheim (*Bjarkøyretten*), which had been replaced by King Magnus’ new code for the Norwegian towns after 1276 (*Byloven*).³⁵ The assembly in Vågan which Bjarne Erlingsson attended in 1282 is referred to as a ‘mót’, just like the meetings in towns like Trondheim. In 1953, Gustav Heber, also a historian, held that *Vágabók* was a by-law for the seasonal fisheries in Lofoten, with jurisdiction restricted to the Vågan area.³⁶

According to Aage Thor Falkanger, the law book carried by the lawman of Steigen in the 1570s, Pros Lauritssøn, may give some insights into the late medieval situation.³⁷ Pros Lauritssøn’s book is a compilation of several legal works from the thirteenth to the sixteenth centuries.³⁸ Larger parts are excerpts from Icelandic manuscripts. The middle part of the codex, however, contains Norwegian law, dated to just before 1300 by Gustav Storm.³⁹ There are excerpts from *Landsloven* (the Frostating version) with some royal amendments and the earlier town law of Trondheim together with the so-called *Farmannsloven* (the merchants’ law). This collection of laws must have been in use at the regional assemblies in Hålogaland, and later at the provincial court at Steigen. Falkanger suggests that those parts containing the older Bjarkøy law and the merchants’ law might have been intended for Vågan, which was the only town-like settlement in Hålogaland in the Middle Ages.

The parallel application of *Frostatingsloven* up to 1274 or beyond does not exclude the existence of ‘local laws’ and customs. Regional adaptations and vari-

32 Ibid

33 Seip 1934: 30

34 Bjørge 1982: 50

35 Amundsen, 2011

36 Heber 1953: 101

37 Falkanger 2007: 73

38 NgL, II: 182, NgL IV: 667 ff

39 Storm 1885: 669

ation might have been the rule rather than the exception. A consistent legal system was probably more an ideal than a reality. Even though there are no traces of a separate provincial law for Hålogaland before 1274, we cannot exclude the existence of a geographically restricted commercial law.

Theories of legal change assert that new laws must be adjusted into the legal culture in which it is imposed.⁴⁰ In his work *Legal Transplants*, Alan Watson argues that it is more demanding to create new laws than to adopt existing law from other legal cultures.⁴¹ In general, *Landsloven* is in line with European jurisprudence in the thirteenth century. The harmonizing of Norwegian law with prevailing European ideologies was a process that took place in parallel with the revision of the provincial laws in the 1260s. These reforms formed a basis for the making of a modernized code for the whole realm in the 1270s. The inheritance laws, for instance, were updated in line with the Fourth Lateran council, with a move away from the strict patrilineal regulations of the older Norwegian provincial laws.⁴² Furthermore, examples from all European history show that legal material will have to be adjusted to the normative standards and local conditions in the legal culture that adopts it.⁴³ The national code took care of Norwegian traditions and sense of justice, not least with regard to the needs of rural society. In that respect, many parts of the law are more influenced by local needs, customs and traditions than by continental jurisprudence.

However, relatively small parts of *Landsloven* take care of the special needs of life in a polar environment. What can be found is anyway borrowed from the old provincial laws. There are clauses about stranded whales, seal hunting, fur collecting, etc. which are familiar to *Frostatingsloven* as well as the provincial law for the western part of Norway, *Gulatingsloven*.⁴⁴ The same can be said about the clauses concerning coastal livelihood and fishing. The only direct reference to northern Norway in the provincial laws from Trøndelag and western Norway concerns relief from tax on the lucrative seasonal fishing in Vågan.⁴⁵ And that's all. None of these references are found in *Landsloven*. On the other hand, local

40 Watson 1974, Legrand 1997

41 Watson 1974: 29ff

42 Vogt 2010: 160

43 Watson 1974: 19, 21, 27, 97, 105, Legrand 1009: 114–17

44 The Code of the Realm. VII.64–65, *Gulatingsloven*: G.91 and G149–50, *Frostatingsloven*: 16.10–11.

45 NgL I, G. 148 and FXVI.1–4; see also Tveit 2011: 56–58

or regional needs were regulated in royal amendments to the *Landsloven*.⁴⁶ Thus, King Håkon V in 1315 adjusted the demands on military support ('leidang') from his subjects in Hålogaland.⁴⁷

Introduction and reception of King Magnus' code in the north

We don't know much about the introduction of *Landsloven* in Hålogaland. An amendment from 1313 tells us that King Håkon V Magnusson had met with a certain Marteinn in Bergen, who was said to be the 'King of Finns', which indicates that he had a leading position among the Sámi.⁴⁸ In his amendment, King Håkon promised to reduce the penal fines stipulated in *Landsloven* if the Sámi would abstain from their heathen practices and convert to Christianity. In other words, the new code was known among the population in the Arctic parts, including the Sámi.⁴⁹ At latest in the early fourteenth century the new code must have been introduced in the northern parts, which coincides with our information about a resident royal judge in Hålogaland in c.1300.

When discussing the integration of northern Norway into the law community of the realm, it is important to take the geopolitical situation in northern Fennoscandia into consideration. As already mentioned, historic Finnmark was a huge frontier between the neighbouring states. Taxes from the Sámi population would be collected by officials from Norway, Sweden and Novgorod alike.⁵⁰ The fourteenth century saw several conflicts between the Russians and Norwegians over taxation and boundaries.⁵¹ When Norway and Sweden entered upon a dynastic union in 1319, conflict escalated because war broke out between Sweden and Novgorod. However, a peace treaty was concluded between Norway and Novgorod in 1327.

According to fragments of Norwegian as well as Swedish provincial law texts, Malangen in present-day northern Troms was the historic border of the realm of Norway.⁵² The boundary markers mentioned in these texts correspond to a list appearing in the twelfth-century source *Rimbegla*.⁵³ Another manuscript from

46 Robberstad 1963: 187–91

47 NgL III: 112–13; Håkon thereby mortified his own claim of ships of a certain size; see RN III: 288

48 Sunde 2005: 136

49 NgL III: 106–107. Um sokner i skreidfiskiet om tiund oc om Finner

50 Hansen 2004: 62–67, Hansen 2011: 295–98

51 Hansen 2011: 298–300

52 Hälsingelagen: 398 and 408 n.9, On demarcation: Holmbäck and Wessén 1943: xii–xiii

53 Hansen 2004: 63

Norway from c.1320 confirms this as does Pros Lauritssøn's law book from the late 1570s.⁵⁴

A first attempt to draw a border between Sweden and Norway from Jemtland and Hälsingland (northern Sweden) and northwards stems from 1268 or 1273.⁵⁵ Finnmark was then obviously not seen as an integral part of the Norwegian kingdom, which is confirmed in other sources as well. Although the Norwegian king would traditionally claim dominion over the coastal parts, his claims were rather formal than factual.⁵⁶ As Lars Ivar Hansen has argued, Finnmark was more an outland in the fourteenth century than a part of the kingdom.⁵⁷ However, a fortress was established at Vardøy Island, close to the Russians, to mark his position.

Only after 1400 were the coastal parts of Finnmark incorporated into the national community of law and put under the jurisdiction of Hålogaland.⁵⁸ There have been smaller courts locally in Finnmark before that, but from now on the lawthing at Steigen should be a common court for both Finnmark and Hålogaland. However, full administrative incorporation of these parts into the realm of Norway did not happen until the reign of Christian IV (1588–1648) and the introduction of his revised edition of *Landsloven* in 1604. Finnmark now obtained the status as a province of its own, though to some respect subordinated to Hålogaland, a situation that resembles the relation between Hålogaland and Frostatingslagen in earlier times. Thus, Norwegian political expansion from the high Middle Ages until the early modern period manifested itself by a stepwise integration of landscapes into the national community of law.

Final remarks

The question as to whether Hålogaland was a court province of its own before the fifteenth century does not have a simple answer; neither does the question about a provincial law. Probably these parts of Norway did not develop legal institutions like those that are found in southern Norway prior to the 1270s. However, we cannot let out the possibility that the northernmost region had some locally based

54 (AM.114 fol.) NgL II: 487 ff., NgL IV: 667ff. om islendskr perg 4:o, it can further be found in several manuscripts, among them AM 60, assumed to be from 1330s NgL IV: 547–48; see further B in NgL II: 487ff AM.114 (see AM.322) NgL IV: 503ff, Norway–Russia

55 Ibid

56 Hansen 2011: 306

57 Hansen 2004: 71–72

58 Falkanger 2007: 76

legal administration for centuries with flexible boundaries and unclear loyalties to the crown. As Falkanger also admits, we should be careful to take the provisions in *Landsloven* regarding the number of lawthings or their organization at face value. Jens Arup Seip too holds that the neat system of attendance in the national code does not rule out the coexistence of the old system, and different adaptations in the different provinces.⁵⁹

That King Magnus had visions of a uniform legal system in his realm did not necessarily change reality at once. We know that his successor and son, Håkon V Magnusson, through many initiatives carried out and consolidated the legal system planned under his father. As Seip writes: ‘One is misled to believe in a straightforward development in the organization of the legal system right after the national code.’⁶⁰ The example from Hålogaland of a *Vágabók* in 1282 shows that there were still competing normative sources to the new code several years after its introduction. Moreover, the local law book from Steigen in 1579 reveals that other sources of law than king Magnus’ code might have been in use in the late Middle Ages, and that the local fisheries were still dependant on older regulations.

Individual examples such as King Håkon’s encounter with Marteinn say nothing of the geographical spread or the level of integration into the legal system. The population in the northern regions was probably subject to the southern *Frosta-tingslov* until the 1270s. Most likely the new code was made valid in the areas north of Trøndelag by the sanction at Frosta. However, at latest from the reign of Håkon V Magnusson, the situation in the northern parts has been normalized and Hålogaland has got its own lawman to judge according to the new law. We also have sufficient evidence to conclude that the population or at least some of the people in the area had knowledge of the law that should invalidate all other normative tools. Unconditional acceptance of the new law and court system throughout society, however, seems to have been a long drawn-out process. Nevertheless, the king now had at hand instruments to rule his northernmost territories and make them fully worthy parts of his realm.

Bibliography

Bately, J. & Anton Englert (eds.), *Ohthere’s Voyages. A late 9th-century account of voyages along the coasts of Norway and its cultural context*, Roskilde 2007

⁵⁹ Seip 1934: 16, Falkanger 2007: 49

⁶⁰ Seip 1934: 16 (my translation)

- Bertelsen, Reidar. Vágar, en kortlevd by eller et urbant fiskevær?, in Jan Brendalsmo, Finn-Einar Eliassen & Terje Gansum (eds.), *Den urbane underskog, Strandsteder, utvekslingssteder og småbyer i vikingtid, middelalder og tidlig nytid*, Oslo 2009
- , Tilkomsten av fiskevær med særlig blikk på kysten mellom Vestfjorden og LoppHAVET, in Hansen, Lars Ivar, Holt, Richard and Steinar Imsen (eds.): *Nordens plass i middelalderens nye Europa – Samfunnsomdanning, sentralmakt og periferier*, Rapporter til det 27. Nordiske historikermøte Tromsø 11.-14. August 2011, Speculum Boreale no. 16, Tromsø 2011
- Björgo, Narve, Vågastemne i mellomalderen, in *Hamarspor, eit festskrift til Lars Hamre*, eds. Steinar Imsen & Gudmund Sandvik, Oslo 1982
- Brandt, Fredrik, *Forelæsninger over den norske retshistorie*, II, Kristiania 1883
- Eidnes, Hans, Bjarkøy og Bjarkøyætta, in *Håløygminne*, (1956): 560–565
- Eriksen, Hilmar, Er det mulig på forutsette at Arnarness (fjerdings)ting ikke eksisterte i 1113/14, når Morkinskinna og fire andre kongesagaer sier det motsatte?, in *Håløygminne*, (1956): 454–61
- Falkanger, Aage Thor, *Lagmann og lagting i Hålogaland gjennom 1000 år*, Oslo 2007
- Grågåss Konungsbok* – Genoptrykt efter Vilhjålmur Finsens udgave 1852, Odense 1974
- Hagland, Jan Ragnar and Jørn Sandnes, *Frostatingslova*, Oslo 1994
- , *Bjarkøyretten. Nidaros eldste bylov*, Gjøvik 1997
- Hansen, Lars Ivar, Trondenes kannikegjeld, in Steinar Imsen (ed.) *Ecclesia Nidrosiensis 1153–1537*, Senter for middelalderstudier, NTNU, Skrifter nr. 15, Trondheim 2003
- , Middelaldersamfunnets etniske grenser, in *Fortidsforestillinger – Bruk og misbruk av nordnorsk historie*, Rapport fra det 27. nordnorske historieseminar Hamarøy 27.-29.9.2002, Speculum Boreale no. 4, Tromsø 2004
- , Swedish and Russian 'tax lands' in the North, in S. Imsen (ed.), *Taxes, tributes and tributary lands in the making of the Scandinavian kingdoms in the Middle Ages*, Trondheim 2011
- Heber, Gustav, Vaagebok, in *Håløygminne*, Hefte 3 (1953): 101–103
- Helle, Knut, *Gulatinget og gulatinglova*, Leikanger 2001
- Hertzberg, Ebbe *Grundtrækkene i den ældste norske proces*, Kristiania 1874
- Holmbäck, Åke and Elias Wessén, *Svenska Landskapslagar* IV, Skånelagen, Gotalagen, Stockholm 1943
- Håkon Håkonssons saga*, Hødnebo, Finn (transl.), Norges kongesagaer, vol. 4, 1979

- Keyser, R. og P. A. Munch (eds.), *Norges gamle Love*, I-III, Christiania 1846–49
- Legrand, Pierre: The Impossibility of Legal Transplants, *Maastricht Journal of European and Comparative Law*, (1997): 111–24
- Magnúsdóttir, Auður, Islänningarna och arvsrätten 1264–1281, in P. Andersen (ed.) *Arverettens handlingsrom. Strategier, relasjoner og historisk utvikling, 1100–2000*, Rapporter til det 27. Nordiske historikermøte, Tromsø 11.-14. August 2011, Universitetet i Tromsø (2011)
- Nielssen, A.R. The importance of the Hanseatic trade for the Norwegian settlement in Finnmark, V. Henn and A. Nedkvitne (eds.), *Norwegen und die Hanse – Wirtschaftliche und kulturelle Aspekte im europäischen Vergleich*, Frankfurt am Main 1994
- , *Landnám fra nord. Utvandringa frå det nordlige Norge til Island i vikingtiden*, Stamsund 2012
- Njåstad, Magne, *Jemtland 1270–1530*, forthcoming 2014.
- Olsen, Bjørnar, Urbanczyk, Przemyslaw and Colin Amundsen (eds.), *Hybrid Spaces. Medieval Finnmark and the archaeology of multi-room houses*, Oslo 2011
- Refsdal, Ivar, i Bugge Alexander: *Norges historie fremstillet for det norske folk* I-2. Kristiania: Aschehoug, 1910, s. 29
- Robberstad, Knut, *Gulatingsslovi*, Oslo 1981 [1937]
- , Jemteland og Magnus lagabøtes lovbok, *Tidsskrift utgiven av juridiska föreningen i Finland*, Helsingfors 1963
- Schøning, Jakob, Lagmenn i Nordlandene og Finnmark mellem omtr. 1200 og 1797, *Håløygminne*, Hefte 4, (1930), 179–
- Seip, Jens Arup, *Lagmann og lagting i senmiddelalderen og det 16de århundre*, Oslo 1934
- Storm, Gustav (ed.), *Norges gamle Love, IV*, Supplement samt håndskriftbeskrivelser med facsimilier, Christiania 1885
- , *Sigurd Ranessøns process*, Kristiania 1877
- Sunde, Jørn Øyrhagen, *Speculum legale – Rettspegelen*, Bergen 2005
- , Aage Thor Falkanger: Lagmann og lagting i Hålogaland gjennom 1000 år, rev, art., *Tidsskrift for Rettsvitenskap* no. 1 2008 (2008)
- Svenska Landskapslagar* III, Södermannalagen, Hälsingelagen, eds. Holmbäck, Åke and Elias Wessén, Stockholm 1940
- Taranger, Absalon, *Magnus Lagabøters Landslov*, Oslo/Bergen 1979 [1915]
- , Alting og lagting, *Historisk Tidsskrift*, 29 (1930)
- , Om kongevalg i Norge i sagatiden, *Historisk Tidsskrift*, 30 (1934–36), 110–166/273–311

- Tveit, Miriam, Lawmaking as expression and instrument for consolidation of power – Cnut's laws and developments in the Norwegian kingdom, in Hansen, Lars Ivar, Holt, Richard and Steinar Imsen (eds.): *Nordens plass i middelalderens nye Europa – Samfunnsomdanning, sentralmakt og periferier*, Rapporter til det 27. Nordiske historikermøte Tromsø 11.-14. August 2011, Speculum Boreale no. 16 Tromsø 2011
- Vogt, Helle, *The Function of Kinship in Medieval Nordic Legislation*, Leiden & Boston 2010
- Watson, Alan, *Legal Transplants, An Approach to Comparative Law*, Edinburgh 1974

Chapter 3: Västergötland as a community and the making of a provincial law

Thomas Lindkvist

In Sweden, legislation and written laws appeared later than in the other Scandinavian kingdoms. Sweden was in many respects a latecomer in the processes that might be described in different ways: as the emergence of a feudal society, as a state formation or as Europeanization, i.e. the integration within a wider cultural, economic and social unity. The provincial laws have been explained and regarded from all these different theoretical perspectives. For a long period, it was an established precept that the provincial laws reflected an indigenous and orally transmitted legal tradition. This view has increasingly been challenged and the influence of canonical law and other external impacts are increasingly stressed.¹

The laws are the most prominent example of a new administrative literacy in Sweden. The great period of legislation in Sweden was mainly confined to the late thirteenth century and early fourteenth century. It was also the period with the emergence of a more formalized political structure in Sweden. An administrative literacy became more substantial and the political framework more formalized.² The laws were part of a new political culture and a state formation process.

There are nine medieval provincial codes, usually termed 'landskapslagar', preserved from medieval Sweden.³ The legal provinces, 'lagsagor', had in principle a separate law. Some of them were promulgated by the king, such as the law of Uppland in 1296 and the law of Södermanland in 1327. For example, in the preface of the law of Uppland, it was stated that the law was based both upon ancient, 'pagan', customary traditions and new law. The law of Uppland had a great influence upon the making of other provincial codes, e.g. the law of Hälsingland. The later code of the realm (*Magnus Erikssons landslag*) from the middle

¹ See, especially, Per Nyström 1974: 62–78; Elsa Sjöholm 1988; Göran Inger 1997: 423–37

² Ingrid Larsson 2001; K. G. Westman 1904; Herman Schück 2005

³ Here the law of Gotland is included. The islands were but loosely integrated within the Swedish realm and the structure and content of the law differ substantially from the legal traditions of the mainland. Concerning the provincial laws, see especially Dieter Strauch 2011: 393–512.

of the fourteenth century was based essentially on the law of Uppland and other laws of eastern Sweden.

For some provinces there was no separate law. There have been several discussions concerning the ‘missing laws’. It is uncertain whether there was a written law of Öland or if the law of Östergötland was used in addition or as a complement to regional customary law.⁴ A law of the province of Närke is known from a royal charter in 1330, but no text is preserved.⁵ It is uncertain whether there was a separate law of Värmland.

The code of Västergötland

The Västgöta law has often been regarded as somewhat exceptional among the provincial codes of Sweden. The content of the law is somewhat different from the laws of eastern Sweden. The differences have sometimes been explained by the chronology. The Västgöta law might thus represent a pristine stage in the development of legislation in Sweden. The law is preserved in two versions in contrast with the other provincial laws. They have been termed the older and the younger laws (*Äldre Västgötalagen* and *Yngre Västgötalagen*).

The first version is known through a fragment dated to c.1250. A more complete manuscript is from the period after 1281. The second version of the law is preserved in a codex dated to c.1350.⁶

The text of the Västgöta law I is transmitted mainly in one single manuscript, Stockholm B 59 (Kungliga biblioteket, Royal Library). The codex consists of different and separate parts.

The law differs concerning classification and structure from the later provincial codes from eastern Sweden. Added to law proper are several other texts, among which is the so-called treaty of Danaholm regulating the border between King Emund of Uppsala and Sven Forkbeard of Denmark. There is a list regulating the fines between the ‘härads’ of Västergötland. The statutes of bishop Brynjulf of Skara, dated to 1281, are included in the codex, thus making a ‘terminus post quem’ of the manuscript. There is also a list of the churches in Västergötland. All these texts are written by one hand.

Later lists of the borders of the land of Västergötland, the common forests, rivers, lakes and mountains as well as some other judicial comments were added.

⁴ See latest Thorsten Andersson 2011: 17–20; Dieter Strauch 2012: 113–35

⁵ Jan Liedgren 1967: 451–52

⁶ Natanael Beckman 1924: iii–xxvi; Åke Holmbäck and Elias Wessén 1946: xi–xlv; Gösta Åqvist 1976: 337–41

Not least, the lists of commons indicate an inventory and register of what was considered to be the property of the community in Västergötland, guarding it against royal claims.

The second part of the manuscript by Elias Wessén named KB B 59b contains lists of the law-speakers ('lagmän') of Västergötland, the kings of Sweden and the bishops of Skara, written between 1240 and 1250.⁷ There are also other regulations and statutes, e.g. the statutes of Alsnö from 1280, and regulations from the 'edsöre' legislation, i.e. the king's law of peace of the realm. It was the earliest legislation of the entire realm and is connected with the jarl Birger Magnusson. The term 'edsöre' does not appear in Västgöta law I, but corresponds roughly to the 'urbota' crimes. These were crimes that could not be expiated and compensated through fines, but meant outlawry in the entire land, here understood as the province of Västergötland. The Västgöta law I is from a period when the royal influence was weaker and less implemented.

The codex B 59 also contains the book or excerpts of Lydekinus. This text has been characterized as private annotations or excerpts from the second version of the Västgöta law. According to a well-established opinion, not least by the editors and translators Carl Johan Schlyter, Åke Holmbäck and Elias Wessén, the Lydekinus contains regulations from the second version of the Västgöta law but that are missing in the older one. Göran B. Nilsson has, however, recently challenged this view in a meticulous and comprehensive study.⁸ The book of Lydekinus was not a collection of excerpts. Instead the annotations of Lydekinus were remnants of a process of negotiations of implementing the interests of the Church and the Kingship upon the legal traditions of Västergötland. The different stages of the complicated negotiations during c.1295–c.1315 are reconstructed by Nilsson. Probably the entire codex B 59 is to be regarded as a preparation for a second, modernized version of the Västgöta law.

Content and composition differ from the provincial laws of eastern Sweden. The greater part of the Swedish laws emerged at the end of the thirteenth and fourteenth centuries, when the canonical and royal influence is evident and substantial. There is no royal promulgation of either the versions of the Västgöta law contrary to the Uppland law.

7 Nathanael Beckman 1912: 140–48

8 Göran B. Nilsson 2012

Law-speakers, kings and bishops

The legislative initiative was in Västergötland under the control of the law-speakers of the land. In the second version of Västgötalagen, the royal influence is evidently greater. The canonical law of the Church was only partly implemented in Västergötland at the end the thirteenth century.⁹

The lists of the kings, law-speakers and bishops could be regarded as the earliest example of history writing in Sweden. The text is, however, rather rudimentary.¹⁰ The first 19 law-speakers, 17 bishops and 18 Swedish Christian kings are here remembered by name and, in general, rather short entries. The lists are not based upon an oral tradition.¹¹

Most attention has been paid by historians to the royal list running from Olof Skötkonung (c.990–c.1020) to king Johan (John) Sverkersson (1216–22), how these kings were related to the province of Västergötland and how they were accepted by the provincial aristocracy and community. A rather unfamiliar king like Håkan Röde, or Håkon the Red, is considered to be a king of Sweden in around 1070, although the list associates him exclusively with Västergötland. The list mentions that he was born at Leverne in Västergötland and that he was buried there.

The first king is Olaf, who received baptism at Husaby in Västergötland and donated land to the bishop's see at Skara. King Stenkil (dead 1066) is the fifth of the list and he loved the 'västgötar' (the inhabitants of Västergötland) above all other men in his realm. He represented thus an ideal past. The historian Sture Bolin pointed out the trend of the royal list that the members of the Sverkerian dynasty were treated more positively since they inherited kingship. This was a contrast to the rival and usurping kings of the Erikian dynasty.¹²

The kings of the Stenkil dynasty are commemorated in relation to their functions as judges and wardens of law. King Inge I (around 1100) never infringed the law followed in the different lands (provinces). He thus accepted the law or legal tradition of Västergötland. King Hallsten (dead c.1070), his brother, made a settlement in every case that came to him. King Philip (c.1100–18) could never be accused of breaking the law. After the last king of this dynasty, the new king Ragnvald (dead c.1130) showed disrespect to the inhabitants of Västergötland and received

9 Göran Inger 1999: 9–15

10 Natanael Beckman 1912: 140–8

11 The lists are edited by H. S. Collin and C. J. Schlyter 1827, as IV: 14–16: 295–307; Jonas Carlquist 2002: 133–46; Ivar Lindquist 1941: 14–17, 18–37

12 Sture Bolin 1931: 154–60

an ignominious death. After him the land was ruled by a good law-speaker and the chiefs who were loyal to their land. The good law-speaker was Karl of Edsvära.

The lists of the bishops and of the law-speakers have been less discussed by Swedish historians. It is in these lists, however, that we find the longer entries, especially concerning the bishop Bengt and the law-speaker Eskil. Bengt (second half of the twelfth century) was the great organizer of the diocese. The landed estates of the bishopric were doubled during his regime. Churches were built and the liturgy developed.

Among the law-speakers, two are remembered and praised more than the others. Karl of Edsvära was the ideal judge in the early twelfth century and ruled the land during a royal interregnum, probably after the eviction of King Ragnvald. Karl is called ‘faðþir at fostærlanði’, which might be considered to correspond to ‘pater patriæ’. He thus acted as an ideal ruler in the absence of a recognized king.

Special attention is, however, paid to Eskil from the first half of the thirteenth century. He found and investigated the ancient, ‘pagan’ law of Lum. It has been assumed that the first version of the provincial law as it appears in the codex was possibly the result of Eskil’s ‘law-finding’, i.e. his legislative activities. He was considered a learned man, equal to the clerics. He was son of Magnus Minnesköld of Bjälbo and thus half-brother to Birger Magnusson the jarl. By marriage, he was related to the kings of the Erikian dynasty and the Norwegian ‘jarl’ (earl) Håkon Galen.¹³ Eskil is remembered to have supported the inhabitants of Västergötland and their chieftains.

The two last law-speakers of the list, Gustav and Folke, in the middle of the thirteenth century, were remembered to have established the regulations making the progeny of concubines illegitimate, and thus not capable as legatees. One important instrument in the canonical matrimonial law was explicitly introduced by law-speakers. It is also reflected in the first version of the code. It was also said that they took away many pagan customs: ‘tok marghir hedþær af warum laghum’. What was considered as pagan is, however, unknown.¹⁴

The royal list begins with Olof Skötkonung, explicitly proclaimed as the first Christian king. The first bishop was Sigfrid, a missionary bishop who brought Christianity to Västergötland. Hereby the founding of the bishop’s see in Västergötland is emphasized.¹⁵

13 Jerker Rosén 1953: 522–23

14 SSGL, 1, 297. Äldre Västgötalagen, Arfþær bolkaer § 8

15 Concerning bishop Sigfrid, see especially Toni Schmid 1931; Jan Arvid Hellström 1996: 15–41. Concerning the archaeological evidence of early Christianization, see Claes Theliander 2005

The legitimacy of the law-speakers is, however, more ancient. The first law-speaker was Lum or Lumber and it is marked that he was a pagan, ‘heðþen’. His follower, Björn Kialki, was pagan as well, or at least not familiar with the Christian faith, or salvation; he was ‘eygh kunugh hælægh crīsnæ’. It is, however, never stated who the first Christian law-speaker was. The first without any reference to paganism was number three in the list, Tore Räv of Gökhem, solely mentioned by name. No explicit conversion and transition from paganism to Christianity is mentioned among the ‘lagmän’. The pagan origins of the law are thus stressed; the law was more ancient than Chistendom, Church and kingship. In the preface of the law of Uppland, it was also stressed that the original law was invented by the pagan Viger.

The *lagmän* as an office had a long tradition in Västergötland, and it entirely represented the community of the land, or at least the aristocratic elite. There were, however, not so good ‘lagmän’, like the unfair Tubbe stallare.¹⁶

If, as is often assumed, Eskil was the legislator of the first version of the law of Västergötland, the possibility is that it had Norwegian inspiration. He had dynastic and political relations with Norway. There are some similarities of terminology between the Västgöta law and the codes of eastern Norway. But no direct loans are discernible. Anyhow, the Västgöta law must also be regarded as a very exclusive and regional law.

Västergötland compared to eastern and central Sweden

The legal tradition of Västergötland differs in comparison with the other Swedish laws. The inheritance law was more similar to Norwegian and Icelandic tradition than to eastern Sweden.¹⁷ The model, a written law, was probably Norwegian. It is more accurate to regard it as a provincial law, where the influence of the kingship was slight in comparison with the later laws of eastern Sweden. In some cases, the legal tradition of Västergötland also made a differentiation between people from different areas, and between provinces within the kingdom, i.e. Västergötland versus the rest. Fines were differentiated for homicide on a man from Västergötland and someone from other parts of the realm of Sweden, a Swede or a man from Småland (‘svæskan man eller smalenskæn innan konungsrikis man’), or if the victim was Danish or Norwegian. A further category was a man from the

¹⁶ This article is partly based upon a short study of the law speakers of Västergötland, Thomas Lindkvist 2007: 67–78

¹⁷ Lars Ivar Hansen 2000: 113

South (Germany?) or an Englishman.¹⁸ The identity of the land of Västergötland is clear. There was, at least to a certain extent, a distinction made from the rest of the kingdom. Similar ethnic distinctions are unknown from the other provincial codes of mainland Sweden. There are several other specific features. One was the collective responsibility, i.e. the duty in some cases to find the culpable or the one responsible.

The role of the law-speaker was of greater importance in Västergötland than in the rest of Sweden. The very existence of a rudimentary historiography is an indication. He should, according to the law, be the son of a 'bonde'.¹⁹ The term 'bonde' stands evidently for a member of the aristocracy, or rather a confined group of dominating men. It indicates possibly a landowner, not in the service of the King.²⁰ It was also stated that the bishop of Skara should be the son of a 'bonde'.²¹ The office was controlled by some lineages and inherited during certain periods. The sons of Algut held the title for three generations at the end of the twelfth century and the early thirteenth century.²²

Royal influence in appointing a law-speaker was non-existent. There was a distinction in the law between the judicial capability of the king and the law-speaker. The role of the former was restricted.²³ The royal influence over legislation and – probably – jurisdiction in Västergötland was weaker than the provincial laws in the rest of mainland Sweden. When a general code of the land was promulgated in the entire realm around 1350 (*Magnus Erikssons landslag*), the implementation of the new law took place later, after the reign of King Albert, in Västergötland than in eastern Sweden.²⁴

From an evolutionistic perspective, it could of course be explained that the law of Västergötland reflects an older tradition than the other provincial codes

18 SSGL, vol. 1, Äldre Västgötalagen: Af mandrapi § 5, Af særæ malum blokar §§ 3, 5, Bardaghæ bolvær § 2

19 SSGL, vol. 1, Äldre Västgötalagen, Rättslösabalken § 3pr

20 Gerhard Hafström 1965: 150

21 SSGL, vol. 1, Äldre Västgötalagen, Rättslösabalken § 2. It has been suggested that the regulations concerning the elections of kings, bishops and law-speakers were introduced during the law-speakership of Eskil. See Erik Lönnroth 1959: 18–19.

22 Algut's son Sigtrygg considered himself to be too young and unlearned to hold the office. Instead Önd was elected, and after him the brother Nagle. Then, Sigtrygg Algutsson became law-speaker. He was succeeded by his son Algut. This Algut was the immediate predecessor of Eskil, but probably there was no kin relationship. With Eskil the office was held by a member of the mighty clan of Bjälbo from Östergötland.

23 SSGL, vol. 1, Äldre Västgötalagen, Rättslösabalken § 3:1. The lagmän law-speaker was the judge of alla gõtars ting. There could be a separate royal court when the king visited Västergötland.

24 Åke Holmbäck and Elias Wessén 1962: lvi–lx

of Sweden. But it is not only a question of chronology. Taking the character, the diverging content and the rudimentary and primitive historical writing into consideration, it might be considered as the legitimizing of the traditions of a province.

The law and the lists are from the period when the legal and political system in Sweden reached a higher degree of organization and institutionalization. The development reflected alternative agents in this process. The state building and the Christianization processes differed regionally in an emerging Sweden. Västergötland was central to the emerging Christian monarchy during the eleventh, the twelfth and the early thirteenth centuries. One of the rivalling dynasties, often termed the Erikians by historians, probably had their ancestral estate there. Varnhem abbey, a Cistercian monastery founded in the 1150s, became the sepulchral abbey of most of the kings and other prominent members of that dynasty. When, however, a more strict consolidation of the monarchy took place from the middle of the thirteenth century, there was a distinct shift of geographical importance. Political power was transferred to eastern Sweden. The political, economic and social structures closely connected with a more 'Europeanized' kingdom evolved there. In the making of a more institutionalized European monarchy in Sweden in the thirteenth century – especially during the second half – Västergötland became a political periphery. The legislation, influenced by canon law, emerged more systematically in the areas around Lake Mälaren; the law book of Uppland is the most prominent example.

The administrative structures for taxation and estate management became more systematic, regulated and therefore more efficient in eastern Sweden. The land measurement systems, like the 'attung' and the 'markland', introduced in central Sweden during the thirteenth century and promoted by the kingdom and the great spiritual institutions were never introduced in Västergötland.²⁵ The agrarian structure is less known, but lacks the regularities and the more systematic character which indicate a more planned organization. The social structure was more resistant to the new administrative innovations of the late thirteenth century. Västergötland was also less urbanized than Östergötland and the area around Lake Mälaren.²⁶ An older or more archaic social and political order existed in Västergötland. Eastern Sweden became a more dynamic region from an economic point of view from the middle of the thirteenth century onwards.

Västergötland was later many times separated from the rest of Sweden. During the struggles between the sons of King Magnus Birgersson, Duke Erik upheld

25 Folke Dovring 1947: 65–77

26 Hans Andersson 1982: 55–67

a separate realm in the present western Sweden covering areas of all the three Scandinavian kingdoms.²⁷ There were possibilities, during the fourteenth century, of a 'new' political unit, an alternative to the eventual realms or kingdoms.²⁸

The first version of a code of Västergötland and the historiography were manifestations of a regional identity which legitimized the regional aristocracy. Legislation and thus a societal transformation were carried out by a regional aristocracy representing the community of the province rather than by agents of the emerging kingdom: hence emerged a form of regional conservatism and the marking of the identity and rights of Västergötland versus the kingdom.

Bibliography

- Anderson, Hans, Städer i öst och väst – regional stadsutveckling under medeltiden, *Bebyggelsehistorisk tidskrift*, nr. 3, 1982: 55–67
- Andersson, Thorsten, Fanns det en medeltida Ölandslag?, *Saga och sed. Kungl. Gustav Adolfs akademiens årsbok* 2010, Uppsala 2011: 17–20
- Beckman, Nathanael, Studier till Västgötagarnas historia, *Arkiv för nordisk filologi*, 28, 1912: 140–8
- , *Äldre Västgötaglagen. Översatt och förklarad* (Västergötland. Bidrag till landskapets kulturhistoria och naturbeskrivning. B.3), Uppsala 1924
- Bolin, Sture, *Om Nordens äldsta historieforskning. Studier över dess metodik och källvärde*, Lund 1931
- Carlquist, Jonas, Fornsvenska lagmans-, kunga- och biskopslängder – memorerande eller informerande?, in Claes Gejrot et al. (eds.), *Ny väg till medeltidbreven*. Skrifter utgivna av Riksarkivet, 18, Stockholm 2002: 133–46
- Collin, H.S. & C.J. Schlyter, *Samling af Sweriges gamla lagar*, vol 1, *Westgötaglagen*, Stockholm 1827
- Dovring, Folke, *Attungen och marklandet. Studier över agrara förhållanden i medeltiden Sverige*, Lund 1947
- Fagerland, Tor Einar, *Krigføring og politisk kultur i nordisk middelalder. De mellomnordiske konfliktene 1286–1319 i et europeisk perspektiv*, Trondheim 2006
- Göransson, Sölve, De regelbundna stukturerna i Östsveriges bebyggelsesgeografi. Ett försök till preciseringar av utbredning och kronologi, in *Kulturgeografiske*

²⁷ See Ole Georg Moseng et al. 1999: 147–56; Tor Einar Fagerland 2006: 111–51

²⁸ Cf. Erik Opsahl 2002: 25–44, especially 33

- perspektiv. Forskningsbidrag från Uppsala 1985* (Geografiska regionsstudier utgivna av Kulturgeografiska institutionen vid Uppsala universitet, 15), Uppsala 1985: 65–77
- Hafström, Garhard, Lagman, *Kulturhistorisk leksikon för nordisk middelalder*, vol. 10, København 1965: 150
- Hansen, Lars Ivar, Slektskap, in Anne Eidsfeldt et al. (eds.), *Holmgang. Om førmoderne samfunn. Festschrift til Kåre Lunden*, Oslo 2000: 113
- Hellström, Jan Arvid, *Vägar till Sveriges kristnande*, Stockholm 1996
- Holmbäck, Åke & Elias Wessén, *Svenska landskapslagar tolkade och förklarade för nutidens svenskar*, vol. 5, Stockholm 1946
- , *Magnus Erikssons landslag i nusvensk tolkning*, Rättshistoriskt bibliotek 6, Stockholm 1962
- Inger, Göran, *Upplandslagen 700 år*, in *Festschrift till Stig Strömholm*, Uppsala 1977: 423–37
- , Kanonisk och inhemsk rätt under biskop Brynjolf Algotssons tid, *Kyrkohistorisk årsskrift* 1999: 9–15
- Larsson, Ingrid, *Svenska medeltidsbrev. Om framväxten av ett offentligt skriftbruk inom administration, förvaltning och rättsutövning*, Stockholm 2001
- Liedgren, Jan, Närkeslagen, *Kulturhistorisk leksikon för nordisk middelalder*, vol. XII, København 1967: 451–2
- Lindkvist, Thomas, The Lagmän (Law-Speakers) as Regional Elite in Medieval Västergötland, in Tuomas M.S. Lehtonen & Élisabeth Mornet (eds.), *Les Élités Nordiques et l'Europe Occidentale (XIIe–XVe Siècle)*, Paris 2007: 67–78
- Lindquist, Ivar, Västgötalagens litterära bilagor. Medeltida svensk småbäretelsekonst på poesi och prosa, *Skrifter utgivna av Vetenskaps societeten i Lund*, 26, Lund 1941: 14–17, 18–37
- Lönnroth, Erik, *Från svensk medeltid*, Stockholm 1959
- Moseng, Ole Georg et al., *Norsk historie I, 750–1537*, Oslo 1999
- Nilsson, Göran B., *Nytt ljus över Yngre Västgötalagen. Den bestickande teorin om en medeltida lagstiftningsprocess*, Stockholm 2012
- Nyström, Per, Landskapslagarna, in Tomas Forser (ed.) *Historieskrivningens dilemma och andra studier av Per Nyström*, Stockholm 1974: 62–78 (originally published in 1934)
- Opsahl, Erik, 'Til noreghes vil jak ey'. Norsk og svensk i 1300-tallets diplommateriale og i moderne kildepublikasjoner, in *Ny väg till medeltidsbrev* (Skrifter utgivna av Riksarkivet, 18) Stockholm 2002: 25–44
- Rosén, Jerker, Eskil (Magnusson), *Svenskt biografiskt lexikon*, 14, Stockholm 1953: 522–23

- Schmid, Toni, *Den helige Sigfrid*, Lund 1931
- Schück, Herman, *Rikets råd och män. Herredag och råd i Sverige 1280–1480*, Stockholm 2005
- Sjöholm, Elsa, *Sveriges medeltidslagar. Europeisk rättstradition i politisk omvandling*, Lund 1988
- SSGL = *Samling av Sveriges gamla lagar*
- Strauch, Dieter, *Mittelalterliches nordisches Recht bis 1500*, Berlin & New York 2011
- , Gab es eine mittelalterliches Ölandslag?, in *Saga och sed. Kungl. Gustav Adolfs akademis årsbok* 2011, Uppsala 2012: 113–35
- Theliander, Claes, *Västergötlands kristnande. Religionsskifte och gravskickets förändring 700–1200*, Göteborg 2005
- Westman, K.G., *Svenska rådets historia till år 1306*, Uppsala 1904
- Åqvist, Gösta, *Västgötagarna, Kulturhistorisk leksikon för nordisk middelalder*, vol. 20, København 1976: 337–41

Chapter 4: The freeholder and positive legislation in late medieval Sweden

Gabriela Bjarne Larsson

A year after the murder of Engelbrekt (d. 1436), the Council of the Realm promulgated a statute named the statute of law and order, because they looked upon the peasantry as a political and military threat. The decisions taken in this statute by the Council of the Realm (without the king's consent) sought to prevent the allodial peasant's possibilities of increasing his property and, consequently, of rising in rank. Furthermore, the statute was promulgated without the approval of those affected by the decisions. This lack of approval was against what the law prescribed. How could it go this far? Why did the tax-paying freeholder no longer give his consent to legislation that affected him? After all, the law of the realm from 1350 gave him this right.¹ This chapter sheds light on the process which led to the degradation of the freeholder as a participant in decisions. But first, one has to go further back than the law of the realm from 1350 to demonstrate the king's power to legislate and explain why the freeholder in the first place had the right to participate in decisions concerning him.

During the high Middle Ages, kings saw themselves restricted in their possibilities to create new, human laws. In Sweden, during the thirteenth century, the provinces ('*landskap*') as a judicial entity were independent, and allodial farmers had a say in judicial and political matters. Not until the reign of Magnus Birgersson in the last decades of the century did the king gain control over the aristocracy and the Church, to the extent that he, with their support and consent, could promulgate laws applicable all over the realm. The scholar Herman Schück has shown how King Magnus Birgersson gathered 'the maiores regni' around him and how his 'consilarii' were elected among them.²

According to Thomas of Aquino, a legislator does have the right to change laws but only for the sake of adjusting them to his own time and place. These amend-

¹ The Law of the Realm, the *landslag* MEL Kungabalken (KgB) chap. 5, §7

² Schück 2005: 33–34

ments must not contradict or abate the eternal principles of God-given natural law. In the Nordic countries, during the thirteenth century references can be found in every preamble, in praefatos in royal law codifications, or in arengas to royal legislation to this divine law. They also include explanations for why the lawmaker wanted to revise or ‘clarify’ the laws. The authors were also keen on emphasising that their legislation was built upon earlier laws.³ But most importantly, it was impossible for a king to impose new, human laws – positive laws – without the consent from others in power and without gaining approval from those concerned. The Italian scholar Maurizio Lupoi stresses that all kings in Europe had to gain consent when promulgating written law.⁴ We know that the approval ceremony in Sweden in the late thirteenth and at least during half of the fourteenth century took place at the ‘landskapsting’, the provincial assemblies, when new laws were to be accepted. At these assemblies, the allodial peasants, the freeholders, were always represented, at least in Svealand.

In thirteenth-century Europe, positive law derived its legitimacy and its binding force by referring to natural laws. In Sweden, this was still the case in the amendments that Magnus Eriksson promulgated in the 1340s. The secular legislator of positive laws made use of an objective, divine reason for his subjective, conscious human action. As the Finnish legal scholar Kaarlo Tuori says:

Positive laws represented the mutable in the law, that which was amendable by human decisions; natural laws, by contrast, the immutable, that which escaped the powers of the human law giver.⁵

The judicial process and court practices were also regarded as immutable ‘law’. This was not because they belonged to natural law as on the contrary, they were human. Rather, it was because these institutionalized actions had obtained the force of obligation.⁶

When, then, was it necessary for the late medieval lawmaker to create laws in the positive sense, and how did he justify them? The judges, commissioned to impose the laws in their communities, encountered resistance from those affected by the legislation. They wanted to have a say in the decision, in accordance with what they were used to.

3 First in Denmark (*Jyske Lov*), then in Norway (*Landsloven*), and last in Sweden through the statutes of King Magnus Birgersson in the 1280s, Sunde 2005: 123

4 Lupoi 2010: 283 et passim

5 Tuori 2009: 18

6 Tuori 2009; Bagge 2001: 73–85; Line 2007: 152

The law of the realm, the ‘landslag’

During the late Middle Ages, Sweden had two codes intended to be employed throughout the entire realm. One of them was solely for the towns (‘stadslag’) and the other one was for the countryside (‘landslag’), which appeared around 1350 and was revised and codified in 1442 by the union king Christopher of Bavaria. The first law of the realm (‘landslag’) appeared during the reign of the Swedish king Magnus Eriksson, and was a unification of several provincial codes (‘landskapslagar’) containing new provisions and older customs. It was an attempt to standardise the laws, and to align the passing of sentences by ‘lagmän’ (lawmen) in the various provinces. The objective was to make it possible to derive decisions in concrete cases from general principles, and thus to avoid capricious decisions in public lawsuits, something that was common during the early Middle Ages.⁷

This first ‘landslag’ was not only a unification and a standardisation of provincial laws but also an incorporation of preceding royal legislation, foremost by king Magnus Eriksson himself and royal statutes by his grandfather, king Magnus Birgersson Ladulås. The royal legislation by the latter, concerning breaches of the king’s peace, was already partly incorporated in the provincial codes when the commission started to work on the unification of the provincial laws to create the ‘landslag’.⁸

The king’s powers according to the law of the realm

Because of the extensive research on the period leading up to the compilation of the ‘landslag’, we have quite good knowledge of the powers that the king had gained by the time the law of the realm appeared. The king’s position in the judicial system was strengthened, to a great extent thanks to the incorporation of paragraphs from preceding statutes into the land law that brought him income in the form of high fines.⁹ The king’s role as the embodiment of justice was appreciated and the incorporation of secular statutes promoted the institutor’s power to legislate. Still the distinction between legislation and judgment was unclear in the land law. Indeed

7 Bagge 2001: 80–81 argues that in the early Middle Ages, decision-making at the *ting* never derived from general principles, but rather from the strength of one of the parties, which meant that the same type of case could end in very different ways since no general principle was in force. Only the rules of procedure were followed by the parties.

8 Larsson 1994, chap. 2, especially figure 1: 43

9 Holmbäck and Wessén 1962: XIV–XXVI, XXXIII–XXXVIII

the king-as-judge figure and his role as protector of the peace was established during the thirteenth century and incorporated in the law.

But the king's right to legislate was limited according to the written constitution in the *kungabalk* of the land law; he could never legislate on his own. He had to get consent from all concerned, including freeholders, and thus not only from his Council.¹⁰ He had the right to promulgate and to codify new laws if he had obtained consent from the parties affected by the decisions.

He could impose extraordinary taxes under certain circumstances: when the kingdom was threatened by a foreign army, in connection with internal uprisings, before a coronation, when he performed his 'Eriksgata',¹¹ at the king's matrimony, and finally for the upkeep of his castles.¹² When it was time to impose the extraordinary tax, the law decreed that every diocese under the command of the bishop and the lawman, six nobles, and six freeholders had the right to decide whether the inhabitants in the law province ('lagsaga') were willing to contribute, and, if so, to determine the amount of their contribution.

As a judge the king had the highest authority; he was the divinely appointed guardian of law, the fount of justice.¹³ The king's court ('konungsräfst') was introduced in the law of the realm. Cases laid before the king's judgment rendered the Crown an income in the form of high fines. Previously, rules that regulated a king's court had only been found in the provincial law of Östergötland. Surely the king had long passed judgment in different courts and assemblies, according to local custom, or presided over the proceedings as a fount of justice, but never in a royal court of his own. In the law of the realm, from 1350 the composition of the king's court was established. This increased his control over the passing of sentences that, in accordance with the law, yielded high penalties for the perpetrator and thus rendered an income for the Crown in the form of significant fines.

Through the codification of the 'landslag' the king also gained control over the lawmen and the lower district judges ('häradshövding') within the province. Together they could align the production of norms. From now on, all these judges were the king's agents, his officials, and it is clearly stated in the 'landslag' how they should be appointed. A 'häradshövding' was appointed by the king after a process in which the lawman summoned the district court in question, and this

10 In the *landslag* MEL KGB chap. 5, §7, it is stated that consent had to be given by the *allmoge*, which means by every free inhabitant.

11 'Eriksgata, that is the newly elected king's ride through the Swedish provinces to be acclaimed at the regional diets.'

12 MEL KGB chap. 5, § 6

13 Péneau 2012: 241–78; Line 2007: 151; Bagge 1987; Moberg 1984; Drar 1980.

court put forward three candidates (freeholders) before the king. A district court consisted of twelve freeholders and this court assisted the judge and helped him pass judgments. In his thesis from 1987, Sten Claëson has shown that deviations from the law's rules of election of a 'häradshövding' were rare.¹⁴ The king gave those who exercised justice the economic rights to fines as a mode of payment for their services. When a lawman was nominated, the board consisted of six aristocrats, 'frälse', six freeholders, and two clerics, as his job was to collaborate with these groups.¹⁵ As you can see, the freeholders were represented even here, because the Crown still expected them to be the king's servants in the making. The lawman was part of the political elite of the realm; he was a landowner.¹⁶

Before the introduction of the *landslag*, the law-speakers had ruled their own provinces and regions without the king's supervision. The first lawman to become subordinate to the king was the lawman of Uppland according to the provincial code of Uppland, dating from 1296. The lawman of each province supervised the lower district courts and judges of his province. The lawman had the responsibility to implement new legal reforms before the lower district judges. The lawman also played a part in the process of the king's installation both before and after the codification of the law of the realm, and especially the lawman from the province of Uppland had a key position.¹⁷

Summing up then, the king had his council and his royal court, and controlled all the judges in the realm. Still on the local level, freeholders actively participated in the courts and could rise in rank and serve the king. The king's legislative decision-making was nevertheless restricted. He always had to reach agreements or obtain the parties' consent. His judicial power was however considerable; he had the final word and could decide the outcome in several types of cases.¹⁸ These decisions also gave him the right to a share of all ordinary fines as well as the right to the complete sum in special cases.

14 MEL Tingmålalbalken chap. 1 for the appointment of the lagman, Tingmålalbalken chap. 2 for the appointment of the häradshövding'; Claëson 1987

15 MEL Rättegångsbalken chap. 1

16 Linkvist 2007: 68, 73. This landowner was called a *bonde*, a freeholder in the end of the thirteenth century

17 Péneau 2012: 255; Linkvist 2007: 67–78

18 Imsen 2012: 204 calls it the (Norwegian) king's monopoly to determine the level of punishment

Introducing the *landslag* in the provinces

The gradually incorporated law of the realm and its impact on the provinces has been studied by Per-Axel Wiktorsson.¹⁹ He used court cases from all the Swedish provinces – Uppland; Östergötland, with the island Öland; Västergötland; Värmland; Södermanland; Närke; Västmanland, with Dalarna returned separately; Tiohärad (Småland); Finland and Hälsingland, including all the northern parts of Sweden – to determine in which circumstances these ‘lagsagor’ felt obliged to use the law of the realm, instead of the provincial law. First, he looked for the earliest statement or references to a written law (in contrast to custom or mores) in every province. In the beginning of the investigated period, the charters were written in Latin and they expressed the written law of the province (the ‘terra patriæ’), but after 1350 the law of the realm could be referred to, often in Swedish as the ‘*landslag*’ rather than with the Latin expression ‘*lex patriæ*’.

The first statement in Latin of the law of the province differs in time between the provinces. The earliest statements concern Södermanland and Östergötland and both date from 1279.²⁰ Wiktorsson’s goal has been to determine when the law of the realm (the ‘*landzlag*’, or other various versions of this spelling) was referred to or applicable. Again the law of the realm was first applied in Östergötland. It was in use on 21 April 1351, and Wiktorsson demonstrates that the law of the realm must have been promulgated sometime between 25 March 1350 and April 1351.²¹ The law of the realm was applied in the 1350s in Finland, Västmanland, Uppland, and Södermanland (all situated around the big lake Mälaren except for Finland). In the 1360s, the *Landslag* was in use in Värmland, Tiohärad, Närke, and last in Västergötland 1366.²² One could say that the Swedish government was successful in inaugurating the new law so quickly, perhaps thanks to the fact that the ‘lagmän’ served the Crown and often belonged to the King’s Council by this point.²³

¹⁹ Wiktorsson 1988: 125–41; Wiktorsson 1988a: 142–86

²⁰ Wiktorsson 1988a: 143–44

²¹ Ibid.: 133–35

²² Ibid.: 157–81

²³ In Norway, the legislators had been as successful as in Sweden, but 80 years earlier. Sunde 2005: 132

Secular statutes, amendments

Prior to the late medieval codes of the realm (from 1350 and 1442), as well as between them and after them, the government promulgated secular statutes (se. ‘stadga’, no. ‘retterbot’, or ‘skipan’, fr. ordonance).²⁴ The statutes following the first ‘landslag’ have not been scrutinised by scholars anywhere near as closely as those preceding the 1350 code. Except the present contributor, nobody has studied their influence on the revised ‘landslag’ from 1442. When the legal scholar Åke Holmbäck and the philologist Elias Wessén in 1962 interpreted the 1350 code and translated it into modern Swedish, they analysed the royal statutes’ influence on the first ‘landslag’, as well as the provincial codes’ impact on the new law.²⁵ What they also did was to understate the importance of the revised code from 1442; they even said that it was not in use until the sixteenth century.²⁶ Still today, their view that the revision was not far-reaching in its alterations remains prevalent among Swedish scholars.²⁷ I disagree, but will not go further into it here.

European scholars agree that secular statutes often promoted the institutor’s judicial power and, on rare occasions, indirectly even his power to legislate. In Sweden, in the fourteenth century and in the beginning of the fifteenth century, these statutes were instigated by the king and promulgated by him with the approbation of his Council²⁸ (Magnus Eriksson’s consilarii included five ordinary bishops, the archbishop as chancellor, and 22 nobles, i.e. the lawmen, the king’s mounted warriors, or administrators). After the uprising by Engelbrekt in the 1430s, it was the Council of the Realm that on its own (without the king) instituted statutes in the name of the Swedish kingdom.²⁹ Statutes from the Council of the Realm were promulgated throughout the rest of the century, still without the king’s participation.

In my doctoral thesis from 1994, I argue that the secular statutes were of two kinds. First, I look upon the statutes as agreements between those concerned by the

24 Cf. earlier

25 Holmbäck and Wessén 1962: XIV–XXVI, XXXIII–XXXVIII

26 Ibid.: XIII, XLVIII–XLIX

27 Only Perneau 2012 has observed one of my conclusions in my dissertation thesis concerning the division of the judicial power and the consequently realized judicial, legal process order in the revised ‘landslag’.

28 ‘[T]he search for consensus was one of the principal purposes of every form of legal behaviour’ according to Lupoi, 2010: 224. This need of support is elaborated in chap. 8 in Lupoi’s book, in which he refers to numerous studies.

29 Nota bene the difference between the king’s Council and the Council of the Realm: Herman Schück 2005, especially chap. 6.

decisions, i.e. as contracts between the royal power and other noble groups' claims to economic, political, or judicial power. These statutory decisions regulated their mutual relationships and claims. The parties concerned were in each case accessory to the decisions, as the law of the realm prescribed. So in these decisions shared by king and aristocracy, or the Church, one could say that the 'landslag' was followed. In these situations, law-making and decision-making were the reaching of agreement between parties that enjoyed approximately the same social status. In secular statutory law, this was the norm throughout the Middle Ages.

Second, I argue that economic decisions that affected the allodial but tax-paying peasantry (the freeholders) violated the rules of legislation stated in the 'kungabalk' in the 'landslag'. In these statutes, the government defied the law of the realm by not letting the free landowning peasants to take part in the decisions. The statutes thus stipulated that those in power governed the freeholders. According to my reading of the *kungabalk* in the 'landslag', it gives the freeholder not only the right to participate in decisions concerning himself, but also the possibility to upgrade his position and be the king's warrior if he has the appropriate means. The scholar Sigge Rahmqvist has shown that this was the case for several freeholders during the fourteenth century, a phenomenon that started after the promulgation of the statute of Alsnö in 1279 by Magnus Birgersson.³⁰ But more importantly, the land law still gives him the right to participate as a freeholder in economic decisions concerning him as a freeholder.³¹ As mentioned earlier, the freeholder was a crucial participant in judicial practice. He acted as a witness, as a co-juror, and as a representative of the community in the district court ('häradsting'), and in different boards and assemblies.³² The freeholder could even represent his community in the court of the province lawthing, ruled by the lawman.

Positive law

In the statutes from the late Middle Ages regarding economic rights, the freeholders are not present and they do not give their consent. These decisions reflect a government that takes the role of a coercive force seeking to inflict new law

30 Rahmqvist 1996: chap. 8

31 Freeholder wanting to be warrior: MEL KGB chap. 11 § 2; freeholder participating in decision-making concerning taxes: MEL KGB chap. 5, § 6–7. In the provincial codes, the freeholder had more power and rights than according to the 'landslag'. He lost his right to bear arms: MEL såråmålsbalken chap. 9

32 The Norwegian freeholders' part in constituting the Norwegian state is stressed by Imsen 2012: 201–04

upon its subjects, a type of government that we as historians associate with a later, absolutist state. Here I want to denote the content of these later statutes ‘positive law’³³ due to the fact that the government imposed written decisions on parties that had not given their consent. In Sweden, these kinds of decisions were new. The government used the written word to impose laws on freeholders, treating them not as a party in the decision, but as subjects, something the high Middle Ages’ oral *ting*-members were not used to. What I would argue is that this form of decision-making points towards the early modern period, when those in power represented their subjects. The freeholder was then seen as the king’s subject, and the tenant (‘landbo’) as a subject of the aristocracy. This degradation of the freeholder’s participation in decision-making was gradually implemented during the late Middle Ages. In the following examples, I will study further statutes in which the focus was on economic legislation that affected peasants.

Examples of this kind of decision-making are rare, and most of them are from the fifteenth century when kings were non-Swedish or the initiator was the Council of the Realm (not the same thing as the King’s Council). This chapter examines whether these decisions were taken in extreme situations that warranted positive actions which excluded freeholders from participating in the decision-making. Or whether it was simply a natural outcome of a centralized government that used the written word as its weapon? I shall provide some examples of this kind of legislation and discuss the matter.

Examples

Only two statutes from the fourteenth century imposed a new set of rules on the landowning peasantry, the freeholder. One came immediately after the Black Death’s first wave, and was promulgated in 1352.³⁴ This statute did not refer to any natural law, perhaps because the situation must have been obvious to all: times had changed and so had human conditions. The right to legislate according to Thomas of Aquino was apparent. Even the right to legislate according to the land law was apparent in the form of the plague’s devastating consequences. There was no need for any justification.

The lack of rent-paying peasants after the first wave of the plague prompted decisions that regulated the possibilities for a free landowning peasant to take

33 Positive law is not a concept Lupoi uses, but he does discuss the term ‘placuit’ and says that it stands for the lawmaker’s will to impose a set of rules. This manifestation of his will provoked those concerned, especially those who had lost their right to give their consent, Lupoi 2010: 283–84.

34 The best version for the statute promulgated in 1352 is found in Hadorphs Gambla stadgar 1687: 22–23. See Larsson 1994: 52–59.

service as a rent-paying peasant. The statute set up four criteria for when a freeholder could take service and abandon his obligations to the Crown as a tax-paying peasant. The statute was formulated as an agreement between king and nobility and could thus be seen as violating the rights for freeholding peasants to participate in decisions affecting them, as it was stated in the 'kungabalk' of the land law (referred to earlier). After the Black Death, the lack of peasants resulted in low demands on services to the lord though taxes to the king remained stable. Therefore, lots of free, landowning peasants preferred to take service as tenants rather than cultivate their own land and pay taxes to the Crown. It had become a problem for the Crown, which saw freeholders abandon their land for services to a landlord. Therefore, the Crown agreed to let poor, free landowning peasants or peasants owning land scattered in different villages to take service as tenants and relieve them of their duty to pay taxes to the king. In contrast, a full-scale freeholding peasant was forbidden to abandon his land to serve a lord had he not installed a peasant in his place that could fulfil his duties to the Crown.³⁵

This can be interpreted in two ways: one is that the decision can be seen as a fulfilment of the king's and nobles' duty to adjust laws to altered conditions. This is then one of the justifications that they could use when imposing innovative legislation, according to the law.³⁶ Alternatively, the decision can be interpreted as a settlement between the king and the landlords, above the heads of the freeholding peasants, forbidding them the right to decide what to do with their own land. Such an interpretation would look upon the king and landlords as representing their peasants, something that did not correspond with the 'landslag's' appreciation of the freeholder.

Tax-paying assemblies

In late medieval Sweden, free landowners contributed to taxes as a collective entity and usually not as individuals. The community, under the guidance of the Crown agent (the 'fogde') or the district judge ('häradshövding') together with twelve free landowning peasants, assessed if a freeholder had enough land to be able to contribute. The local unit, the collective entity, divided the taxes between themselves without the involvement of any official. On the regional as well as the district level, the freeholder's rights were preserved. Until at least 1380, these local assemblies were composed of twelve freeholding peasants who usually voted in favour of taxing the peasants so that the tax burden would be distributed among

³⁵ Larsson 1994: 136–39

³⁶ MEL KgB chap. 5, § 6

as many as possible. That year the King's Council seized the opportunity to promulgate a statute in the weak king's absence, to be able to change the composition of the tax-granting assembly.³⁷ The King's Council wanted it to be composed of as many freeholders as tenants, because the Council's members hoped for the tenants to vote in favour of the landlords. Voting for them meant voting for tax exemption for the freeholder working on a lord's land. The consequences would hopefully be that the freeholder remained a peasant on the lord's land. This was a way of recruiting tenants at the cost of tax-paying freeholders, a struggle between king and nobility.

The King's Council acted irresponsibly, selfishly, and against their authority. They used positive law in its worst sense to get their own way, to fulfil their own economic desires. The motivation they gave for issuing this decree was justice, an essential value in natural law. The council claimed that it was just to let half the assembly consist of rent-paying peasants. One of the council members, the magnate Bo Jonsson, sealed the charter alone, which is peculiar to say the least. It should have been sealed by the entire body of the king's counsellors. Bo Jonsson rightly has attained a reputation of being corrupt, and it is fair to wonder how many members of the council he really had to back him up. Since written references are rare we do not know if this new composition of the assembly was ever implemented.

Extraordinary taxes – permanent taxes

In the beginning of union queen Margareta's reign (1397–1412), she imposed an extraordinary tax that included rent-paying peasants as well as freeholders. Danes seems to have been more used to extraordinary taxes than Swedes, though both countries had approximately the same kind of fiscal administration. Both during the fourteenth and the fifteenth centuries, the Danish Crown imposed extraordinary taxes on their people to finance the administration of their castles.³⁸ The need to do so was not apparent for the Swedish Crown, thanks perhaps to the fact that we upheld the number of tax-paying freeholders throughout these centuries, while freeholders were decreasing in Denmark.³⁹ According to Swedish law, the sovereign could only impose extraordinary (temporary) taxes under certain conditions, one of which was war, and it could be said that Swedish conditions were war-like when

37 The best version of the statute promulgated in 1380 can be found in RA A9, fol. 7, the register of the diocese of Linköping, written down in 1391. See Larsson 1994: 60–61

38 Poulsen 2012: 68–72 and his references in footnotes; Retsö 2009: 360–61, his concluding remarks on late medieval Sweden

39 Bøgh 2006

Queen Margareta promulgated her decree. When Margareta's future successor rode his 'Eriksgata' in 1401, he liberated the peasants from one third of this tax, and two years later his mother Margareta promulgated a statute that gave away the rest of it.

In the same statute, she made an amendment of this earlier tax so that she actually introduced a new one. She turned parts of the old extraordinary tax into a permanent, annual tax. In her statute from 1403, we meet for the first time a sovereign who addresses the peasantry as subordinate. She and her son are the only ones who have the right to impose taxes on them, and their request is expected to be obeyed by them (article 7).⁴⁰

According to the law, the composition of the regional assembly granting the Crown extraordinary taxes should consist of the bishop and the lawman, six nobles, and six freeholders from every region, as mentioned earlier.⁴¹ Note that the land law gave the freeholder the right to participate. The statute from 1403 is promulgated without the consent of the council. The King's Council answered by seeking to strategically alter the system for how the tax was to be levied. They proposed that a tax unit be composed of two poor and two wealthy landowning peasants. The council's goal was thus to leave the rent-paying peasants out of this new obligation, as they wanted their own peasants exempted from the tax. The scholar Folke Dovring has convincingly demonstrated that the council's proposition was realized.⁴² One could say that this temporary tax became an ordinary tax for the freeholders, a move which in fact was illegal according to the law. The composition of the tax-paying unit and the tax in this form remained until the uprisings in the 1430s.

During the uprisings of Engelbrekt, the Council of the Realm was established as the Swedish government. The Council of the Realm had dethroned the union king Erik from office and governed the Swedish kingdom between 1434 and 1441. It had its own administration and set up its own system where important documents were registered and kept.⁴³ It even had its own seal. During its period of government, the Council of the Realm promulgated two very different statutes, though they had one thing in common: namely that they became codified by being registered in the council's register/record. This meant that when issuing these statutes the members of the Council referred to themselves as a single entity, used the seal of

⁴⁰ The statute from 1403 in SD 328, SDhk 16083

⁴¹ MEL KgB chap. 5, § 6

⁴² Dovring 1951: 51–53

⁴³ Schück 1976: 285

the Council of the Realm and had no other confirmation from king or other parties affected by the decrees.

The one promulgated in 1439 regulated the judicial power between the Church, the king, and the aristocracy, and all the parties were represented in the Council itself.⁴⁴ Decisions taken through the statute by the Council of the Realm were, to a great extent, incorporated in the revision of the *Landslag* of 1442, and influenced the judicial process and the jurisdiction in the revised law. Through these incorporations the Church and the aristocracy gained control over the court of appeal.⁴⁵ I will, however, leave this for now because this statute represents the group that I have classified as agreements between those in power concerning subjects that they both sought and actually reached an agreement on.

In contrast, the statute proclaimed in 1437 is an example of positive law, where those concerned did not have the right to participate in the decision or give their approval. It quickly was called the statute of law and order.⁴⁶ As already mentioned, the law of the realm gave the government the right to impose temporary taxes if the kingdom suffered, for example, from uprisings. The first article tried to reassure the freeholders by reducing the tax imposed by Margareta. The tax-paying unit was enlarged so that instead of four farmers paying the fixed amount there were to be six. This meant that everybody paid less.

To compensate for the loss, the Council of the Realm imposed taxes on tenants working on freeholder's land. Half of their rent should from now on go to the Crown and only the other half to the freeholder. Although the tenant did not have to pay more, the owner of the land only received half of what he was used to getting from his tenant. The freeholder's earnings were thus significantly reduced. A full-time freeholder was also, according to the statute, forbidden to buy more land. This meant that the authorities tried to stop freeholders from having tenants on their land. They wanted tenants to serve on land owned by the Church and the aristocracy. To top it all, they forbade all sorts of rent-paying tenants the right to buy freeholders land; from now on they could only inherit it. Those in authority wished tenants to stay as tenants (on their lords' land) and did not want freeholders to gain more land than they could handle themselves, without having help from a tenant.

The climate had changed; long gone was the right, expressed in the old land law from 1350, which stated that the free landowning peasants had a say in govern-

44 For the Swedish version of the statute from 1439, see KB B 5b printed in Beckman 1917: 52–53; for the Latin version, see either KB B 2, fol. 145 or LStB J 78, fol. 160

45 Larsson 1994, chap. 4

46 The oldest copy of the statute promulgated in 1437 can be found in a law book (codex) in the University library of Uppsala UUB B9, fol. 132–33. See Larsson 1994: 79

mental matters, or at least in matters concerning their own well-being. The land-owning peasant was no longer considered an armed warrior in the making. He was merely a tax-paying peasant – and was to remain so. As a matter of fact, the statute prohibiting a full-time freeholder to buy more land was incorporated in the ‘kungabalk’ of the revised *Landslag* of 1442.⁴⁷

Final remarks

Records of acts of positive legislation that I have brought forward here came into existence under special circumstances. Sometimes the legislator referred to these circumstances to justify his or her legislation. For example, Margareta implicitly referred to war. When the external conditions were obvious, such as during the Black Death or under the uprisings in the 1430s, these external circumstances were never explicitly mentioned. In these situations, when the legislator could lean on the ‘kungabalk’ in the *landslag*, the right to legislate was apparent. The decisions were formulated plainly and no references to natural laws were mentioned. Only those in power in 1380 referred to a natural law when imposing changes in the composition of the tax-granting assemblies in the kingdom. In this case, the common concept of ‘justice’ was used.

By the fifteenth century, it seemed better to refer to the written law, and especially to the constitution in the ‘kungabalk’ of the written law, when wishing to impose positive law onto subjects (even though these references could contradict the law). Around 1300, it was still important to refer to old customs and ancient (non-written) laws when promulgating a new set of rules. It was equally important to have the parties’ consent.

The aristocracy was the first party that started ‘representing’ its peasants, ‘landbor’. They spoke about tenants as subjects already in the statute from 1380 when the ruler was a king from Mecklenburg, a king accustomed to treating everybody as subjects. Actually, the noblemen strove to keep ‘Landbor’ on their own land, and hoped to capture more peasants from the Crown. Of course, one could denote this as representing the peasants, but the aristocracy was not really representing them, they were merely representing their own interests. Queen Margareta from Denmark was also from a background in which peasants had long since lost their say in judicial matters, so for her it was natural to look upon the freeholder as a mere tax-paying servant. The same goes for her successor, Erik of Pomerania. In Sweden, however, the freeholder had held a higher position. When the Council of

47 KrL KgB 30, § 2

the Realm took over the reign, they tried to follow the Swedish *landlaw*. But the freeholders had become a military threat by supporting the uprisings during the era of Engelbrekt. In the statute from 1437, the Council of the Realm consequently treated the freeholder as a subject, seeking to crush his economic power.

The Council of the Realm, in power until the revised *landlaw* was ready to be codified, succeeded in getting many of its decisions adopted in the new law. From now on, nobody questioned the right for those in power to impose positive law on their subjects without their approval. The king and nobility were to represent others, not only themselves, and the Swedish peasants could no longer represent themselves in the same way as they had during most of the fourteenth century. In the revised law from 1442, the freeholder had become a subject, and the new law stopped freeholders from competing with landlords about tenants. From now on, as the statutes following in the wake of the revised *landlaw* clearly show, decisions concerning the peasants were solely taken by their masters: the Crown, the aristocracy, or the Church. It would take some decades before the Swedish peasantry had an impact on decision-making.

Bibliography

Primary sources

Beckman, Natanael, *Studier i outgivna fornsvenska handskrifter*, Stockholm 1917

Hadorph, *Gambla Stadgar*, Stockholm 1687

KB B 5b = Codex in National Library of Sweden, Stockholm

KB B2 = Codex in National Library of Sweden, Stockholm

KrL = *Konung Christoffers Landslag*, ed. Schlyter D C J Samling af Sweriges Gamla Lagar X, Stockholm 1862

LStB J 78 = Codex in Linköpings stiftsbibliotek (Library of the diocese of Linköping)

Medieval Cartularies of Svenskt diplomatarium = SDhk, National Archives, Stockholm online: www.riksarkivet.se

MEL = *Magnus Erikssons landslag i nusvensk tolkning* av Holmbäck och Wessén, Lund 1962

RA A9 = *Register from the diocese of Linköping*, National Archives, Stockholm

SD = *Svenskt diplomatarium 1401–1420*, Vol I. ed. National Archives, Stockholm 1875–1904.

UUB B9 = Codex in University Library of Uppsala

Secondary sources

- Bagge, Sverre, *The political thought of The King's mirror*, Medieval Scandinavia supplements 3, Odense 1987
- , Law and justice in Norway in the Middle Ages, in Lars Bisgaard et al. (eds.) *Medieval Spirituality in Scandinavia and Europe*, Odense 2001: 73–85
- Bøgh, Anders, Bundones regis. Selvejerbøndernes antal og funktioner især i senmiddelalderen, in Agnes Siggerður Arnórsdóttir, Ingesman, Per & Poulsen, Bjørn (eds.), *Konge, kirke og samfund: de to øvrighedsmagter i dansk senmiddelalder*, Århus 2007: 117–150
- Claëson, Sten, *Häradshövdingeämbetet i senmedeltidens och Gustav Vasas Sverige*, Stockholm 1987
- Dovring, Folke, *De stående skatterna på jord 1400–1600*, Lund 1951
- Drar, Kristin, *Konungens herravälde såsom rättvisans, fridens och frihetens beskydd: medeltidens fursteideal i svenskt hög- och senmedeltida källmaterial*, Stockholm 1980
- Holmbäck, Åke and Wessén, Elias, Introduction to *Magnus Erikssons landslag i nysvensk tolkning*, Lund 1962
- Imsen, Steinar Den gammelnorske bondestaten, in Bagge, Gelting, Hervik et al. (eds.) *Statsutvikling i Skandinavia i middelalderen*, Oslo 2012: 192–210
- Larsson, Gabriela Bjarne, *Stadgelagstiftning i senmedeltidens Sverige*, Institutet för rättshistorisk forskning, Rättshistoriskt bibliotek, vol. 51, Lund 1994
- Lindkvist, Thomas, The Lagmän as Regional Elite, in Medieval Västergötland in Tuomas M.S. Lehtonen et Elisabeth Mornet (eds.) *Les Élités Nordiques et L'Europe Occidentale XII–XV siècle*, Paris 2007: 67–78
- Line, Philip, *Kingship and State Formation in Sweden 1130–1290*, Leiden 2007
- Lupoi, Maurizio, *On the Origins of the European Legal Order*, Leiden & Boston 2000, Online 2010
- Moberg, Lennart, *Konungastyrelsen: en filologisk undersökning = [Konungastyrelsen]: [a philological study]*, Sv. fornskriftsällskapet, Uppsala 1984
- Péneau, Corinne, La table du royaume. L'image du roi dispensateur de la justice en Suède XIV – milieu du XV siècle), in Silvere Menegaldo and Bernard Ribémont (eds.) *Le roi fontaine de justice. Pouvoir justicier et pouvoir royal au Moyen Âge et à la Renaissance*, 2012: 241–278
- Poulsen, Bjørn, *Bondens penge: studier i sønderjyske regnskaber 1400–1650*, Odense 1990
- , Den danske konges indtægter i middelalderen, in Bagge, Sverre (ed.), *Statsutvikling i Skandinavia i middelalderen*, Oslo, 2012: 55–75

- Rahmqvist, Sigurd, *Sätessgård och gods. De medeltida frälsegodsens framväxt mot bakgrund av Upplands bebyggelsehistoria*, Uppsala 1996
- Retsö, Dag, *Länsförvaltningen i Sverige 1434–1520*, Acta Universitatis Stockholmiensis, Stockholm, 2009
- Schück, Herman, *Rikets brev och register. Arkivbildande, kansliväsen och tradition inom den medeltida svenska statsmakten*, Stockholm 1976
- , *Rikets råd och män. Herredag och råd i Sverige 1280–1480*, Stockholm 2005
- Sunde, Jørn Øyrehagen, *Speculum legale: Rettsspegelen: ein introduksjon til den norske rettskulturen si historie i eit europeisk perspektiv*, Bergen 2005
- Tuori, Kaarlo, *Critical Legal Positivism*, Farnham 2009
- Wiktorsson, Per-Axel, Ett bidrag till kännedomen om landslagens ikraftträdande, in *Rättshistoriska studier* bd 14, Lund 1988: 125–141
- , Beteckningar för lag i diplom, in *Rättshistoriska studier* bd 14, Lund 1988a: 142–186

Chapter 5: ‘With law the land shall be built’ Danish legislation for the realm in the thirteenth century

Helle Vogt

Introduction

‘With law the land shall be built.’ These words initiate the prologue of the Law of Jutland (*Jyske lov*) of 1241, and reading them it is easy to get the impression that a close connection between royal legislation and the strengthening of central power was attempted by the kings in the thirteenth century. However, as this chapter will show, the connection is not as clear-cut as one would think.

This chapter will discuss the following question: Did common legislation for the realm unite the Danish kingdom in the thirteenth century? There are two answers; the first and most direct answer is ‘no!’. Primarily because there was very little legislation for the whole realm in thirteenth-century Denmark, and the most important aspect of it did not strengthen central power. On the contrary, it weakened it, which leads to the consideration of a second answer, namely that the question cannot be answered with either a yes or a no. Indeed, that the answer depends on the eyes of the beholder. Common legislation might not, in the long run, have strengthened royal power, but it did lay the foundation for constitutional order.

Denmark had very little common legislation, not only in the thirteenth century but also during the rest of the Middle Ages, and unlike Norway and Sweden, it did not get a law for the whole realm – or for the towns for that matter – in the medieval period. In 1521–22, King Christian II (r. 1513–23) tried to give national laws for the cities and the countryside, but he was deposed before his legislation came into force. In the end, it was only in 1683, during the absolutism, that the Danish realm obtained legal unity. Before turning to the laws that can be described as being in force across the kingdom, a few words need to be said about the different kinds of regional and personal legislation in Denmark. The Danish legislation of the thirteenth century can roughly be divided into three groups: legislation for the realm, legislation for a specific territory – province or town – and legislation for a certain group of people, i.e. the king’s men. Denmark was divided into three major law

provinces: Scania, Jutland and Zealand, each with its own provincial law – Zealand even had two – dating from the early to the mid thirteenth century. The provincial laws were written with the consent, and probably on the initiative, of royal power and the church.¹ The laws are quite long and detailed, covering areas such as inheritance, property transfer, the village and agricultural matters, and what we with a modern word would call criminal law. There are differences between the laws but they are not significant and are mostly to be found within the procedural law.² In Denmark as well as in the other Nordic kingdoms, the towns had their own individual municipal laws given to the town by its lord.³ All Danish towns were under the king's jurisdiction, with the exception of Copenhagen, which was owned by the bishop of Roskilde. In the thirteenth century, it was not only the provinces that got their own law, many of the existing towns got municipal laws. Many of the laws had common features, but all towns got their own individual law. The last group of legislation was the one given to a specific group – the king's men. One such example is the twelfth-century *Lex castrensis* or, in Danish, *Vederlagsloven* (the law of fines), which claimed to be a law for the royal housecarls,⁴ but its origin and use is a vexed question.⁵ Only in the early fifteenth century was a regular law for the royal castles given, but already in the thirteenth century we can find royal legislation concerning the king's men, both his local officials (old Danish 'umbutsmen' not to confuse with the modern 'ombudsmen') and those who owed the king personal war service, the 'herremænd', which can be literally translated as 'the lord's men' (the lord being the temporal master, i.e. the king, not God). These particular laws are regarded by many, but by no means all, legal historians as being common legislative acts for the entire realm.

While the subject of this chapter is legislation for the realm, it is important to ponder if it makes any sense to distinguish between a 'proper' law of the realm and a provincial law? It may well be the case that the only difference between a law of the realm and three identical laws that were accepted in each of the provinces was one of terminology. Take for instance the *Magnus Code* (Norway). Four

1 For the writing down of the laws, see Vogt 2010: 44–49, 64–72, and Andersen 2006: 77–86, 94–100, 140–42, 164–66

2 For the change in the procedural law, see Andersen 2011

3 On the municipal laws, see Jacobsen 1995

4 *Scriptores minores historiae Danicae medii ævi*, vol. 1: 64–93

5 Recent research has questioned whether *Lex castrensis* was a real law or merely a learned treatise about the life at court and how the good king ought to legislate and submit to the rule of law. Münster-Swendsen 2012: 257–79

almost identical laws were accepted at the four provincial assemblies, lawthings, with the preambles of the laws specifically mentioning that the law had been laid down for each particular province,⁶ yet it has never been questioned that this was a national law.

The prologue of *Jyske lov* states the following about lawgiving: ‘The law that the king decrees and the province agrees to.’ This line explains how laws, at least in theory, came into force in Denmark; they had to be accepted at the provincial assembly. That is, they had to be accepted by the most prominent men of the province, probably both lay and ecclesiastical, to be valid. Another way to legislate was for a law, either for a single province or for the whole of the kingdom, to be issued with the consent of the king and the best men of the realm, again lay as well as ecclesiastical, when they gathered annually for a parliament⁷ at one of the king’s castles, usually at Nyborg on the island of Funen in the middle of the kingdom. It seems likely that these laws were also accepted at the provincial assemblies, but in this case it must have been merely a matter of tradition since the best men of the provinces already had accepted the law at the parliament.

The legislation for the realm in the thirteenth century

No laws are preserved from the first half of the thirteenth century that we know with certainty were in force in the entire kingdom.⁸ Apart from the provincial laws, a small number of royal decrees have survived the ravages of time, but they are very specifically given for a single province. Yet one could argue that even if one of these ordinances, the one about the abolition of ordeal by hot iron, is preserved only in a Scanian version, it is likely that it had been promulgated to all of the Danish provinces. This particular ordinance begins with the words: ‘The Pope

⁶ Rindal 1995: 10. Vogt 2010: 66

⁷ By using the word ‘parliament’ I have followed the wording of the time, ‘parlamentum, quod hof dicitur’. (‘The parliament that is called “hof”’). ‘Hof’ is the Danish word for gatherings where the king and the best men of the realm were present and agreed about new legislation or other matters of interest for the realm. DDR 1971, text 1, § 1: 75

⁸ It has been suggested that the *Book on Inheritance and Crime* (Arvebog og Orbodemål) could be the law mentioned in a yearbook from 1170 and thereby a law in force throughout the kingdom. However, this can only be a guess since the law is known solely in later fifteenth-century editions, and no other sources either invalidate or confirm that the law was the one mentioned in 1170. If the law had been in force all over the kingdom, it seems strange why all of the provinces received their own legislation later on. Regardless of whether the *Book on Inheritance and Crime* was in force all over the kingdom or not, the provincial laws were based on the principles found in the *Book on Inheritance and Crime*. Vogt 2010: 46–47, Andersen 2011: 71–73

has forbidden all Christian men the ordeal of hot iron. And as that is so, then we do not want to, and cannot, escape from these general provisions.’⁹ Following this ordinance, ordeals were then replaced with boards of nominated men. It would make no sense for the king to wish that the decree from the Fourth Lateran Council would be in force in Scania alone, and not in the entire kingdom. One explanation why only the Scanian version of the ordinance has survived could be that the laws of Zealand and Jutland are younger than 1215 and therefore do not contain the ordeal; hence there was no need to keep copying the ordinance together with the other laws.¹⁰

Jyske Lov

It has been suggested that *Jyske Lov* might have been intended as a national law.¹¹ This argument has been based both on the context of the law itself, being seen as more ‘modern’ than the other laws especially in terms of procedural law, and because compared to older laws, in *Jyske Lov*, the king is afforded a stronger position. This position is evident both within the court system, especially regarding the appointment of jurors, and because taxes and military service are prominent in the law. A third argument as to *Jyske Lov* being intended as a national law is linked to how it was issued. It was given in March 1241 during the final months of Valdemar II’s life, at a parliament at Vordingborg in Zealand in the presence of all princes, bishops and best men of the realm.

Whether or not *Jyske Lov* was intended for the entire realm is impossible to decide from the sources. At the end of the day, it is simply a matter of belief, and I do not share that belief. *Jyske Lov* may have been an attempt to make a law for the entire realm, but it was a failed attempt. In the 1240s, the province of Zealand got a new law, Erik’s Law of Zealand (*Eriks sjællandske Lov*),¹² to supplement the existing one, known as Valdemar’s Law of Zealand (*Valdemars sjællandske Lov*). The dating of the law is a contentious question, but most of the law probably dates from the 1220s.¹³ Even though the context of this new law was, in many

9 DGL vol. I, 2: 781–82

10 The only exception is in Eriks sjællandske Lov. If a man who had been summoned to the assembly did not show up, he lost his case unless he took an ordeal of red-hot iron to prove that he had not been legally summoned. If he cleared himself by the ordeal, he was allowed to defend himself at the assembly for the crime of which he was originally accused. DGL vol. V, EsL II, 51: 160–61

11 For the argument that the *Jyske Lov* was meant to be a national law, see Fenger 1991: 47–50, Gelting 2003: 43–49

12 Probably named after Erik IV (r. 1241–50). For the dating, see Vogt 2010: 68–71

13 Andersen 2006: 140–42

ways, parallel to *Jyske Lov*, Erik's law is much more detailed and in the field of procedural law there are great differences which could indicate that the Zealandic magnates did not like the larger say at the assemblies that the king had acquired in *Jyske Lov*. In Erik's Law, as in the *Jyske Lov*, the king's official has a prominent place, but his office is more regulated, and the law even defines what to do if the official is corrupt.¹⁴

The troubled fifties, sixties and seventies

Two ordinances are preserved from the early 1250s. The oldest version was probably issued on 26 March 1251 during the reign of King Abel (1249–52), in which year a sixteenth-century collection of older-source quotes from something that probably had been a yearbook that 'some new laws were added to the lawbook'.¹⁵ The ordinance is known in a Latin version through two copies from the fifteenth century which form part of a selection of different laws such as the constitution charter of Erik V given in 1282 (more about that later). The ordinance is also known in a Danish translation, and once again from a fifteenth-century manuscript.¹⁶ An expanded version of the ordinance stems probably from the reign of Christopher I (1252–59), although some legal historians have suggested 1263, during the minority of Christopher's son Erik V, a year in which some of the most prominent magnates were executed on very slender legal grounds.¹⁷ This ordinance is preserved in a Latin and a Danish version in manuscripts dating from the second half of the fifteenth century.¹⁸ It is uncertain if either ordinances or neither of them has been in force, or if they were merely signs of unsuccessful royal attempts to strengthen the king's power. The reason why some historians question if they have been in force is that the crown didn't invoke §1 about *lèse-majesté* in the strife between the crown and the eastern bishops, led by the archbishop Jakob Erlandsen, in the 1260s and 1270s. The bishops had paid homage to the king and were hence subsequently accused of being disloyal. Despite this, none of the sources from the struggle mention that the crown accused them of *lèse-majesté*.¹⁹ The main purpose of the ordinances was to regulate the relationship between the king and his men, whether his officials, the men of the court or the 'lord's men', and hence most of the statements in them must be seen as special legislation and not as a general

¹⁴ DGL vol. V, EsL II, 52: 173–74

¹⁵ 'quasdam novas leges libro legalis addidit'. AD 1920: 207

¹⁶ DDR 1971: 7

¹⁷ Kræmmer: 2007: 141

¹⁸ DDR 1971: 50. For a historiographical overview, see Jørgensen 1940: 72–74

¹⁹ On the strife in general, see Skyum-Nielsen 1963

legislation for the whole of the realm. The lord's men are mentioned in *Jyske Lov* and they were probably a rather new group when the law was given, wherefore more legislation was needed. The ordinance regulated their taxpaying, which was reduced in return for large fines if they killed another of the king's men. The ordinance also had rules for 'crimen læsæ majestatis' (lèse-majesté), which clearly could be committed only by those who had sworn allegiance to the king. The only rules that did not solely regulate the relationship between the king and his men were about the breaking of the peace, although it is not clear if these applied to all men in the realm or only the king's men. In any case, they didn't significantly change the rules found in the provincial laws. These laws then must be seen as the king's political weapon against wilful and rebellious magnates in a time of unrest and competing royal lines.²⁰

Christopher I died suddenly in 1259. He was succeeded by his son Erik V, who was a minor, and consequently Denmark was ruled by regency led by the queen dowager, Margrethe, until 1266. The 1260s was a turbulent period with strife between the eastern bishops and the royal power, and the kingdom often being placed under interdict. The strife ended in 1272 with a compromise that undoubtedly favoured the king. Four years later, in 1276, Erik V tried to have his two-year-old son Erik crowned as co-ruler by the parliament, a practice introduced in 1170 and used as a method to pacify the rivalling royal lines in case the king died before his son had established a powerbase that could secure his election.²¹ The sources are very sparse in their information about the parliament of 1276²² but we are informed that all the magnates who were present, except the lord high constable ('marsk') Stig Andersen, paid homage to the infant prince. Here, we get a glimpse of the political disagreement between the king and some of his magnates. At this same parliament, a royal ordinance on lèse-majesté was presented to those attending. The ordinance has only survived in one manuscript, dating from around 1300, and no medieval Danish version is known. This is probably due to the fact

20 Fenger 1971: 437–39. The style of the law and the focus on lèse-majesté show a close link to German and Roman law.

21 Until the introduction of Absolution in 1683, the Danish kings were elected, but from 1170 and up to Erik V's failed attempt in 1276, the kings usually crowned their eldest son as king during their lifetime. This had for a long time been the practice in France, where the king's eldest son was crowned as co-ruler. In 1170, the same year as Knud was crowned in Ringsted, Henry II of England had his eldest son crowned as co-ruler. It was the first time that this happened in English history as well, but the English success was limited as in 1173–74 the young king Henry rebelled against his father.

22 For a discussion about whether it took place at the same parliament or not, see Holberg's convincing arguments. Holberg 1895: 19–20

that it was abolished in 1282. Nevertheless, for the first time, a document set out how *lèse-majesté*, which had been introduced as a crime in the 1251 Ordinance, was defined.

The ordinance²³ has five paragraphs. The first details procedure and punishment for plotting against the king's life, while the second sets out what would happen if one neglected to inform the king about planned marriages between foreign royals. The third paragraph is a statement about illegal and secret connections to foreign lords, the fourth concerns acts that could harm the king with the fifth and final paragraph outlining the punishment for certain aggravated killings.²⁴ Again, only one paragraph, the final one, can be seen as a general piece of legislation for the whole of the realm, with the others only being of importance for the king's men.

At the end of §4 appears the following statement: '[W]hat is said above, that the king as plaintiff should nominate the jurors, was not accepted by anyone in the realm ('regno'), except those few that attended the council ('concilio'), but they [the realm] insisted that the accused should nominate them.'²⁵ Exactly how the term 'realm' should be understood is open to interpretation, but it seems likely that it meant the best men of the realm, that is, the parliament.²⁶ The notice can be viewed in two ways. It could provide us with a glimpse of how new laws were made – that is, a commission made a draft which was accepted by the king and his council and thereafter the draft was open to negotiation by the parliament. But if that were so, why insert the notice in the ordinance? Why not simply send the ordinance out in the form that the king and the parliament had agreed upon? A different way to interpret the notice, which seems more plausible, is that the king had already issued the ordinance without the consent of the parliament and the clause was added when it became clear that the parliament would not accept that the king personally could appoint the jurors and thereby theoretically make it easier to get one of his men condemned for *lèse-majesté*.

One may wonder why the king found it necessary to get a new ordinance on *lèse-majesté* to supplement the one from Abel's reign when there was, at the same time, opposition among the magnates to letting the king strengthen his power over

23 DDR 1971: 60–61

24 For further information, see Fenger 1971: 444–47

25 'Quod autem supradictum est, scilicet quod rex quasi actor n[omina]ret purgatories supradictos, nullis placuit de regno[exceptis] paucis, qui tunc dicto concilio inferfuerunt; set affirma [uerunt], quod reus debeat eos nominare.' DDR 1971: 60–61

26 That those present at the parliament were seen as the *regno* is strengthened by the prologue of Erik V's Ordinance of Vordingborg, known from a later Danish translation: 'wfftær alle danæ rat hoc danæ togæ withær.' DDR 1971: 62

his men and the appointment of Erik VI as co-ruler. As stated earlier, the sources are very scarce but they could indicate that there was a power struggle between the king and some of the magnates. Although the sources are silent about events in the following years, they clearly show that the conflict of interests between the king and the leading magnates increased. The events leading up to the parliament of July 1282 are not known, but the yearbook from the Abbey of Ryd tells of a strife that arose between the king and the princes – ‘principes’.²⁷ Which princes this might be referring to is not mentioned, but it seems likely that they included the sons of the dukes of Schleswig and Northern Halland who had demanded the dukedoms that their fathers had held. The following events taken into consideration, it is evident that the strife was not only between the king and his royal cousins. Many displeased magnates either joined the struggle or used the unstable conditions to show their discontent with the king. One later source from the sixteenth century has been interpreted as providing proof of the magnates stirring up the peasants against the king, but that is doubtful.²⁸ The uprising was successful and the princes finally got their dukedoms in 1283.²⁹ This was the culmination of a longer political process starting in March 1282 when the king issued a provisional decree wherein his power to judge, legislate and collect taxes without the parliament’s consent was significantly reduced.³⁰

1282, a turning point

The decree was promulgated by the king on ‘the advice of all Danes and all Danes agreed’,³¹ and as witnesses, besides bishops and princes, the decree mentions ‘the best men of the kingdom both learned and lay’.³² At this same parliament, Erik V issued a special decree for the entire kingdom with the purpose of protecting shipwrecked merchants, both Danish and foreign, against mistreatment by the king’s

27 Ryd Abbey’s yearbook, AD 1920: 62, ‘Lit oritur inter regem Ericus et principes.’

28 The Danish history writer Arild Hvidtfeld wrote in his Chronicle of the Danes, under the year 1282, that nobility stirred up the peasants against the king. Matzen 1889 (1977): IX–XI. This has convincingly been rejected by Holberg 1895: 53–55.

29 This was just a short respite before the duke of Schleswig again saw his dukedom confiscated in 1285. However, after the murder of Erik V in 1286, he was given back all of his privileges and even formed part of the regency.

30 Poul Johannes Jørgensen didn’t think that it was the rebellion of the princes that made the king issue the decree but that he was forced to do so by the magnates after a political defeat, the nature of which he does not define. Jørgensen 1940: 74–76. Nevertheless, most historians see a link between the two events.

31 ‘efttær alle Danæ rath oc Danæ togæ withær.’ DDR 1971: 62

32 ‘bæstæ mæn aff rigæt bothæ lærtæ og legtæ.’ Ibid.: 65

officials and stewards. It was stated earlier that the rules found in *Jyske Lov* should be in force in the entire kingdom and the king's men would be severely punished if they didn't respect the law. This decree was given by the king alone, but it didn't violate the promises made in the aforementioned decree since its main purpose was to secure that the king's officials respected the law, and prevent them from abusing their power.

Later, in July 1282, the parliament assembled again in Nyborg and there Erik V issued the charter that had been promised in March. The charter, now known by the misnomer *Erik V's coronation charter*³³ – constitutional charter would be more fitting – is found in many medieval and renaissance manuscripts both in the Latin original and in Danish as well as Low German translations. In these manuscripts, the charter appears together with other legal texts. It is not surprising that the charter can be found in law collections, since it kept its legal importance up to the National Law of 1683. It is also quoted in many judgments passed by the courts in the sixteenth and seventeenth centuries. The charter states that it was given in Nyborg at a time when the parliament was gathered, with no mention of the provincial assemblies. However, a Scanian version of the charter is preserved and adapted to the Scanian legislation, which could indicate that the charter was later agreed by the provincial assemblies as well.

Erik V's constitution charter is comprised of four parts. The first part gives general protection against the king's arbitrary use of power.³⁴ It falls into two sections: §§ 1–5, and 10–13 and 16. The first provision is regarding a parliament that should be held once a year. Most of the paragraphs concern the use of royal letters in the prosecution process, and revoke all laws that were in conflict with the laws of King Valdemar. At the time of the charter, the laws of King Valdemar probably referred to the non-royal legislation, i.e. the provincial laws, and the royal legislation given before the death of Valdemar II in 1241 and later became a symbol of 'good old laws'.³⁵ About the administration of justice it is stated that no one could be imprisoned unless he confessed or was caught red-handed, or could get another punishment than the one stated in the laws. The king's officials could not summon

33 'Erik Klippings Håndfæstning', at the time when Erik V issued the charter, 'håndfæstning' merely meant a document that tied the king's hands. However, later in the fourteenth century, it began to be used exclusively for coronation charters.

34 Ludvig Holberg made a very thorough analysis of the different parts. Holberg 1895: 99–101, 111–15.

35 On the laws of King Valdemar, see Hørby 1989: 45–47, who sees it as a sign of emerging state thinking, and Fenger 1971: 448–49.

anybody except to the ordinary assemblies, which presumably meant that they were not allowed to hold private courts. No man could have his land confiscated for a crime, with the exception of lèse-majesté. If someone wanted to raise a claim against the king for unlawful possession of land, the matter should be decided by the parliament. Finally, the king was not allowed to build on private land unless the owner agreed to it, and all confirmed privileges should stand.

The second part of the charter (§§ 6–9) was about protection of the peasantry.³⁶ They regulated the paying of tax, gave a general prohibition against forced labour, unless in times of need, which probably must be understood as being fortification during times of war, and stated that no one should be forced to give poultry or other gifts to the king's table.³⁷ The second paragraph granted free farmers the right to take possession as estate managers (*bryti*).

The third part (§§ 14–15) was concerned with the protection of merchants.³⁸ It was detailed that the law given earlier that year about shipwrecks should be observed, and that no new duties should be laid on the merchants. The fourth and final part (§§ 17–18) regulated the protection of the Church and clerics.³⁹ Prohibitions were given against violent guests, detailed that a guest should be content with what the host offered and neither demand more nor take it violently. This paragraph applied to both lay and cleric, but the problem with travellers who violently took what they wanted if they were not content with what they were offered seems to have been a problem that primarily applied to the Church, and finally the Church in Denmark should have all the freedom that it had in the time of King Valdemar II.

The Charter was unlike later similar charters because it bound not only Erik V but also succeeding kings, and in addition took on the character of being a constitutional law for the whole of the realm.

The concord between the king and the parliament led to a new wave of legislation for the realm. In March 1283, the parliament convened in Helsingborg and issued a king's peace for the realm, known under the name of Eric V's *Helsingborg Ordinance*.⁴⁰ The ordinance's original Latin text is known from a few manuscripts

36 Holberg 1895: 101–11

37 That it could sometimes be difficult to distinguish between voluntary gifts and duties can be seen in *Erik's Law of Zealand*, where, in book III, ch. 63, it is stated that if the householders did not voluntarily give a gift to the king's official, they could not count on his help if they encountered any trouble. DGL vol. V: 357–58

38 Holberg 1895: 116–20

39 Holberg 1895: 120–22

40 Fenger 1971: 449

and was finally printed in 1508. Several Danish translations of the text are also known. It is interesting to note that at a time when the legal language had changed from Latin to Danish, which happened around 1415,⁴¹ the version chosen to be printed was the Latin one and not the vernacular. This could be because greater emphasis was being placed on the Latin text as the original and therefore it carried more authority.

The ordinance consists of five paragraphs, whereof the last three were peace regulations. The first clause outlines prohibitions against luxury in dress, the first of its kind in Denmark. The second clause concerns beer brewing and beer trade, which is primarily a prohibition against importing, selling and drinking German beer. This is the first in a long line of prohibitions against German beer found in Danish legislation from the Middle Ages and the early modern period. German beer was of higher quality than Danish beer and much more expensive, and one can guess that the royal power wanted the money to remain in Denmark. The third clause was an order to found inns for travellers, in order to avoid violent guests in private homes or abbeys, and it provided fixed penalties for those who did not pay their bill. The fourth clause reduced the right to take revenge, and confirmed that the killer's kinsmen had a duty to pay two-thirds of the man-worth if the killer, himself, didn't pay it. The final clause detailed crimes that could not be settled with a fine ('orbodemål') and confirmed the rules for those who had committed such crimes and wanted to buy back their peace from the king, who could not allow it without the acceptance of the dead person's kinsmen. This rule had been changed with the 1276 ordinance on *lèse-majesté*, and recalled in the 1282 charter, and hence the magnates probably had an interest in receiving a confirmation of the old rule.

Much of the ordinance's contents were repeated in May 1284, in one of three new ordinances.⁴² No original ordinances are known, merely numerous Danish copies that differ from province to province. The lack of an original text and the failure of any other source to mention that a law for the realm had been issued makes it questionable if the parliament and the king promulgated one law for the entire realm or three different provincial laws. Parts of the contents are so similar that the three versions must have been built on the same source, and consequently it is most likely that the ordinances were issued on the instruction of the parliament. The Danish legal historian Poul Johannes Jørgensen has suggested that the

41 Knudsen 2011: 163

42 Most of the manuscripts have the same prologue as the 1282 charter, that the king gave the law according to the consent and advice of the parliament at its gathering at Nyborg.

parliament originally issued one Latin version and that the variations between the texts are partly due to different translators and later additions in the Danish translation to make the law fit local conditions.⁴³ Yet there are such differences between the three laws that one may be more inclined to follow Ole Fenger and Ludvig Holberg's opinion that the 1284 laws were not originally meant to be a common legislation for the whole realm, but three laws for each province that tried, within certain areas such as trade, tithe and other duties, to unify the rules throughout the kingdom, while the rest of the paragraphs were appendix to the different provincial laws that only had relevance for that province.⁴⁴ This could also be the reason why no Latin version has survived. The provincial laws were written in Danish, and thus it would be logical to write supplements to them in the same language and not in Latin. This could have been a way to also mark the distinction between provincial and national legislation: legislation for the realm was always in Latin.

Did legislation for the realm unite Denmark?

Now after this 'tour de laws' it is finally time to return to the question that was raised at the beginning: did legislation for the realm unite the kingdom of Denmark in the thirteenth century? Before answering this question, I have to explain what we should understand by 'tying together the kingdom'. Should it be seen as a process of unifying local customs? As strengthening the royal power? Or as the administration of justice? Unlike the Norwegian and the early Swedish provincial laws, there was a much broader consistency to the Danish provincial laws, and there is no doubt that they did a lot to provide uniformity to regional customs on inheritance, property transfer, 'penal' law, regulation of the village and so on. This is probably also one of the reasons why Denmark did not get a law for the whole of the realm until 1683. It was simply not needed in the same way that it was in Norway and Sweden. However, it also meant that legislation for the realm was not needed to tie the kingdom together legally in areas of what we, in a rather anachronistic way, would call private and penal law.

It is evident that the most important legislation for the realm in the thirteenth century, both in the long and in the short term, was *Erik V's constitutional charter*. The constitutional charter, as showed earlier, did weaken the royal power and put a stop to the attempts by kings, in the second half of the thirteenth century, to strengthen the royal power through legislation for the realm. Consequently, the

43 Jørgensen 1940: 76

44 Holberg 1895: 175–85, Fenger 1971: 451

answer to the question of whether legislation for the entire realm strengthened the royal power must be a resounding ‘No!’. On the other hand, the constitutional charter did strengthen the nobility, both lay and ecclesiastical, by protecting them against the king’s despotic actions and by giving them the final say in the matter of new legislation and new taxes and duties. A position the parliament, and later the council of the realm, kept – except for shorter periods⁴⁵ – up until the rise of absolutism in 1660.⁴⁶

A weakening of royal power and a strengthening of magnates does not make it sound like the legislation for the realm tied the kingdom together; it was rather just the opposite. By contrast, modern theories about state building view constitutional legislation as an important step in the direction of turning a kingdom into a state. The power struggles in the second half of the thirteenth century were not about the content of the laws, but more about who should have the right to the administration of justice – the king or the courts – and whether or not the king should be bound by the law. The legal and economic systems that were formed gradually during the century became so well established that the administration of justice, taxes, trade and so on continued uninterrupted in the fourteenth century despite the kingdom being pawned and also having an interregnum.⁴⁷

To conclude, what really tied the realm together in the legal field was not common legislation understood as being that all inhabitants were subject to exactly the same law. It was more that the ideology behind the laws, besides minor differences in the letter of the law, was built on a common understanding of kinship, inheritance, property transfer, compensation, peace and so on – notions that are all important in creating a common identity. Even though most people would still have considered themselves as belonging to a specific place rather than as Zealanders, Scanians or Jutes not to mention Danes, I will claim that Denmark was much more of a unit around 1300 than it had been around 1200 when Saxo in his *Gesta Danorum* stressed the differences between the rebellious and ungrateful Scanians,

45 For instance, during the reign of Valdemar IV. After he had gained control over the whole kingdom, he started a campaign to increase the crown’s possession by summoning political opponents to his court, ‘kongens retterting’ (the king’s court) where they were judged to lose their land on very thin legal bases.

46 Bishops lost their place in the council of the realm after the Reformation in 1536.

47 During the reign of Erik VI (1286–1319), expensive wars were partly paid for by pawning parts of the kingdom to German princes. At his death, his brother Christopher II took over a realm with finances in ruins, and when he died in 1332, a new king was not elected. The western provinces were under the rule of the mortgagees and Scania submitted to the Swedish crown. In 1340, Christopher’s son Valdemar IV became king of northern Jutland and gradually, by redeeming the mortgages and winning military victories, he managed to unite the kingdom and create a strong royal power.

the cowardly Jutes and the brave and manly Zealanders. That development partly came thanks to the legislation, even though most of that legislation was regional and not for the entire kingdom.

Bibliography

- Andersen, Per, *Lærd ret og verdslig lovgivning. Retlig kommunikation og udvikling i middelalderens Danmark*, Copenhagen 2006
- , *Legal Procedure and Practice in Medieval Denmark*, Leiden 2011
- Annales danici medii ævi* [AD], Ellen Jørgensen (ed.) Copenhagen 1920
- Danmarks gamle Landskabslove med Kirkelovene* [DGL], vol. I, 2, publ. by Svend Aakjær and Erik Kroman, vol. V, publ. by Peter Skautrup, eds. Johs. Brøndum-Nielsen and Poul Johs. Jørgensen (Det Danske Sprog- og Litteraturselskab), Copenhagen 1933 & 1937
- Fenger, Ole, *Fejde og mandebod. Studier over slægtsansvaret i germansk og gammeldansk ret*, Århus 1971
- Gelting, Michael H. Skånske Lov og Jyske Lov: Danmarks første kommissionsbetænkning og Danmarks første retsplejelov, in Henrik Dam, Lise Dybdahl and Finn Taksøe-Jensen, (eds.) *Jura & historie. Festskrift til Inger Dübeck som forsker*, Copenhagen 2003: 43–80
- Holberg, Ludvig, *Konge og Danehof i det 13. og 14. Aarhundrede*, Copenhagen 1895
- Hørby, Kai, Velstands krise og tusind baghold 1250–1400, Olaf Olsen (ed.), *Gyldendal og Politikens Danmarkshistorie*, vol. 5, Copenhagen 1989
- Jacobsen, Grethe, *Kvinder, køn og købstadslovgivning 1400–1600. Lovfaste mænd og ærlige kvinder*, Copenhagen 1995
- Jørgensen, Poul Johannes, *Dansk Retshistorie. Retskilderne og Forfatningsrettens Historie indtil sidste Halvdel af det 17. Aarhundrede*, Copenhagen 1940
- Knudsen, Anders Leegaard, Testimonia Placiti – Private Charters as Public Instruments. A Study in Medieval Danish Diplomats, *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde*, (57. Band) 2011: 147–179
- Kræmmer, Michael, *Kongemordernes slægt. Om Hvideslægtens rolle i det 13. århundredes konflikter mellem kirke og kongemagt*, Hansen & Jespersen 2007
- Matzen, Henning, *Danske Kongers Haandfæstninger. Indledende Undersøgelser*, Copenhagen 1889 (reprint 1977)
- Münster-Swendsen, Mia, The Formation of a Danish Court Nobility, Sverre Bagge, Michael H. Gelting, Frode Hervik, Thomas Lindkvist and Bjørn Poulsen (eds.) *Statsudvikling i Skandinavia i middelalderen*, Oslo 2012: 257–279

- Rindal, Magnus, Dei norske mellomalderlovene, Magnus Rindal (ed.) *Skriftlege kjelder til kunnskap om nordisk mellomalder* (KULTs skriftserie vol. 38), Oslo 1995
- Scriptores minores historiae Danicæ medii ævi*, vol. 1 M. Cl. Gertz (ed.), (Selskabet for udgivelse af Kilder til dansk Historie), Copenhagen 1970
- Skyum-Nielsen, Niels, *Kirkekampen i Danmark 1241–1290*, Copenhagen 1963
- Vogt, Helle, *The Function of Kinship in Medieval Nordic Legislation*, Leiden 2010

Chapter 6: Danish Law and Government in Medieval Estonia

By Jens E. Olesen

Danish kings may have participated in the first crusades towards the Holy Land; King Erik Ejegod died in Cyprus in 1103, but it was only when the crusading movement was extended to the Baltic area that the Danish engagement grew and took on important dimensions. When the Second Crusade was mounted in 1147, many preferred to fight for Christianity close to Denmark. This was accepted by the pope, and the same privileges were extended to the participants as to the crusaders going to the Holy Land. Crusades to almost all parts of the Baltic became an important part of the policy of the Danish Church and the Danish kings from the second part of the twelfth century. By 1223, King Valdemar II Sejr (called Valdemar the Victorious, 1202–41) had subjugated great parts of the coastal areas from the island of Rugia up to southern Finland in the northeast of the Baltic.¹

A further expansion of the Danish medieval Empire was, however, stopped in the spring of 1223, when king Valdemar and his son were kidnapped on the island of Lyø by Count Henry of Schwerin. Although later kings planned to continue to undertake Baltic crusades, this development was halted by internal problems between the Danish Church and the Danish Crown. The conquering of the northern parts of Estonia in 1219 is, however, still known to many Danes as the high point of Danish medieval expansion, and especially because the Danish flag, according to a legend, derived from the battle of Lyndanisse on the fifteenth of June 1219 close to what later became the castle of Tallinn. The legend concerning the origin of the Danish flag (Dannebrog) still holds a prominent position in the history of the Danish crusades.²

Estonia became a dukedom and was held by the Danes until it was sold by king Valdemar IV Atterdag to the German Teutonic Order in 1346. These facts are well known, but how the Danes governed Estonia from 1219 onwards has interestingly

1 See especially the volume *Danske Korstog* 2004

2 Lind 2001: 20-27

been studied by very few scholars.³ Estonia was viewed as a part of Denmark in 1329 and was incorporated into the realm after 1219.⁴ In the following paragraph, some aspects of Danish rule in Estonia are dealt with. The main question considered is as follows: Was Danish law introduced to Estonia, or were there different legal systems developed and used during the Danish epoch up to 1346? As will be shown, this was not the case; only a few traces of Danish legal influence in Estonia can be found.

Danish plans towards Estonia developed and were built up over several years. In 1191 and again at the beginning of the thirteenth century, the Danes were active in Finland in the region of Borgå (Porvoo) on their way towards Estonia. German knights and warriors had fought the Estonians for years, but the Estonians allied with the Oxilians and the Russians and were able to stop the Germans from progressing further into Estonia. Bishop Albert of Riga tried to get help from the German Holy Empire, and in 1217, King Valdemar's sister's son, Count Albert of Orlamünde, participated in a crusade against the Livonians. He went back to Denmark in the spring of 1218 together with Bishop Albert, Bishop Dietrich of Estonia and Abbot Bernhard of Dünamünde. They met the King in Schleswig, where he had summoned the Danish bishops and the most prominent magnates to the crowning of this son. After negotiations, King Valdemar promised to participate in a crusade against the Estonians and he wrote to the Pope to get his confirmation, according to which conquered areas were to be parts of his Realm and the Church. The approval was given by Pope Honorius III on the 9th of October 1218.⁵

King Valdemar, accompanied by Count Albert of Orlamünde, Prince Vitslaw of Rugia and their troops, landed in the bay where the castle of Reval (Tallinn) was soon to be erected, at the beginning of June 1219. They destroyed an Estonian fortress and started to build a new fortification. However, the Estonians attacked on the fifteenth of June from five places and made some progress. But in the end they were defeated, especially by the young Prince Vitslaw of Rugia, who played a prominent role in securing the Danish victory. From this battle derived the legend of the Danish flag.⁶

3 See especially Niels Skyum-Nielsen 1971:43, 317ff.; Bunge 1877; Riis 2003: 79-90; Marcus 2008-09; Vogt 2013

4 Riis 2003:87f

5 Danske Korstog 2004; Riis 2003: 65ff. Concerning Count Albert of Orlamünde, see also Olesen 2013:166ff

6 See among others Lind 2001, Danske Korstog 2004:208ff

Quarrels over the affiliation of Estonia soon started between the Danish Archbishop Andreas Sunesen and Bishop Albert of Riga. The question was not solved, but when King Valdemar and Count Albert of Orlamünde 1222 landed on the island of Osilia, Bishop Albert, accompanied by the master of the German Swordbrothers, came to him and managed to establish an agreement in the form of a compromise. The landscapes Sakkala and Ugaunien were to build a border zone between Estonia and Livonia. King Valdemar gave up his demands on Livonia and was satisfied with being given the northern part of Estonia with Tallinn and the landscapes of Reval, Harrien, Wiek, Gerwien and Wirland. The Swordbrothers swore loyalty to King Valdemar, who placed a garrison on the castle and returned to Denmark.⁷

The new Danish castle on Osilia was soon destroyed by the Oxilians, and inspired by this, the Estonians returned to their old faith and besieged the castle of Reval (Tallinn). They were thrown back, but during the winter of 1222–23, they showed up again as a mighty power. The besieged Danes and Germans were lucky, and after four weeks, the Estonians helped by a Russian prince left with empty hands. After the uprising, the Danes were able to keep control of northwest Estonia, but as Christianity had been re-introduced, the landscapes of Gerwien, Wirland and Wiek had placed themselves under the Livonian Church.⁸

The German Swordbrothers soon conquered all of Estonia, giving the Danes the fortress of Reval and Harrien back and keeping the rest. The Danes had no military and diplomatic power to demand more, especially as King Valdemar and his son had been captured on the Danish island of Lyø on the 7th of May 1223 by Count Henry of Schwerin. However, the Danes – at least according to the chronicle of Henry of Livonia – did not give up, but tried to get Wiek and Wirland back. The landscape of Wirland was divided into fiefs by the Germans.⁹

This was the situation when, in the early summer of 1225, the papal Legate Wilhelm of Modena came to Livonia. After lengthy negotiations, Wilhelm persuaded the “Danes” to hand over all territories (Wirland, Jerwen, Harrien and Wiek) to the Pope, so that they held only the castle of Tallinn and the small region around it, which they kept in the name of the King. The Oxilians were besieged by the Germans in 1227, and the castle of Reval had to be surrendered. The Danish troops accepted the commander of the Swordbrothers on behalf of the Pope. The city of Reval was founded and soon began to grow in importance; another castle

7 Riis 2003: 71f.; Skyum-Nielsen 1971: 284

8 Riis 2003: 72

9 Riis 2003: 78; Skyum-Nielsen 1971: 287ff

was erected by the Swordbrothers on the Domberg, where later the cathedral was constructed. In 1230, Reval was recognized as a city.¹⁰

The Pope worked to secure the Baltic area through legates. In 1233, the Swordbrothers attacked the vassals, who were loyal to the Pope, killing many of them, and the Danes were given the northern part of Estonia by a papal court in 1236. The Pope stated that the Swordbrothers had to cede these provinces to Wilhelm of Sabina, who was to hand them over to King Valdemar. During the same year, the Swordbrothers suffered a severe military defeat at the hands of the Lithuanians at the battle of Saule. The Swordbrothers merged with the German Teutonic Order in 1237. King Valdemar threatened to send a naval fleet from Denmark to regain his part of Estonia. During the month of June 1238, negotiations between the King and the Teutonic Order were concluded and peace was established in Stensby on the island of Lolland in Denmark. The Order handed over the castle of Reval and the landscapes of Harrien, Gerwien and Wirland to the Danes. Valdemar kept Gerwien under churchly control; however, he accepted the secular rule of the province by the Order. If new territories were conquered, King Valdemar was to receive two-thirds of the land. Valdemar handed Jerwen over to the Order, but the landscape was in the future to belong to the diocese of Reval under the guidance of the Danish archbishop of Lund.¹¹

Estonia became a dukedom for the King's illegitimate son Knud, who from 1229 at the latest wore the title as Duke of Estonia. The title was introduced again in the 1260s. This time, the new duke was the King himself, Erik V Klipping, and he kept the title ('Dux Estoniae') even while another duke existed. Estonia was viewed as a legitimate heritage of the ruling king. When King Erik attained his majority in 1266, his mother, Queen Margarethe Sambiria, was given Estonia and Wirland, which she kept until her death in 1283. She wore the title "domina Estonie."¹²

Queen Margarethe Sambiria controlled Estonia from her castle, Nykøbing, in Falstria. She and other dukes of Estonia never lived or settled in Estonia. The most important offices of the Danes, by virtue of administrating and controlling the northern landscapes in Estonia, were those of the Bishop of Reval and the Vice-king (governor, vice-regent) or 'capitaneus', residing in the castle of Reval. Prior to 1219, the bishopric was a missionary diocese; in 1240, it changed into a normal bishopric. King Valdemar and his successors kept the right to nominate the bishops

¹⁰ Riis 2003:79.

¹¹ DD I:6, no. 217; Bunge 1877: 95. See also Riis 2003:79; Skyum-Nielsen 1971:318

¹² DD I:5, no. 164; I:6, no. 98. Riis 2003: 82; Skyum-Nielsen 1971: 70

together with the chapter. In 1277, Queen Margarethe handed over her rights to the chapter, and Erik V Klipping confirmed her decision in 1283.¹³

The Danish bishops and almost all of the castellans were Danish, and they were, as a principle, appointed by the government. The castellan on the castle of Reval was at the same time the vice-king of Estonia and was appointed by the king in agreement with his counsellors of the Realm. Other governing institutions were the king's vassals in Estonia, constituting a corporation as well as the Estonian counsellors mentioned for the first time in 1282. There were 12 of them, later 15 (1343) and perhaps the number rose to 17 (1346). The counsellors were elected by the king; it seems that the vassals were allowed, under certain conditions, to choose a new counsellor.¹⁴

In 1252, King Christopher I confirmed the two castellans of Reval and Wesenburg ('homines regis'), with all their manors as free possessions according to the 'lænreet' (Danish word for the German 'Lehnsrecht'), with heritable rights. These stipulations seem to indicate that the highly esteemed castellans – who were often Danish – were treated as a special group as the king's loyal men. Until 1281, the 'homines regis' were often mentioned besides the vassals. Towards the end of the thirteenth century, however, these 'homines regis' find no mention in the sources. Now possibly all the king's men had become vassals, as in the Holy Roman Empire where they were named 'ministeriales' or officials.¹⁵

The feudalism in Livonia meant that a group of vassals were established under the rulers of the landscapes. The vassals were allowed to tax the peasants, but were not given their own dominions to cultivate. The number of vassals varied, but it has been estimated that in the Danish-controlled landscapes Harrien and Wirland, about 130 persons were active. Towards the south of Livonia, the number of vassals was greater.¹⁶

The group of vassals was heterogeneous concerning origin and the conditions of the fiefs. In the north, Danish and German lower aristocrats, esquires and traders received fiefs, the latter group often acquiring land by purchase. The vassals got about 75 percent of the cultivated land into their possession, with the Danish king and the church keeping the rest. According to Paul Johansen, the vassals in the Danish regions of Estonia can be divided into three categories: the magnates (13%), the middle group (19%) and the smaller vassals (68%). The richest vassal,

¹³ Riis 2003:81f

¹⁴ Riis 2003:82; Skyum-Nielsen 1971: 90, 202; Bunge 1877

¹⁵ DD 2:1, no. 80; Bunge 1877

¹⁶ Tarkiainen 2008:90

Thideric de Kyvel, ruled over 442 'ploughlands' (German: 'Haken') divided into twenty big villages, but his areas were also situated near the border at the Neva river, and he had to defend the territory.¹⁷

In central Livonia, south of the Danish landscapes, a group of under-vassals developed. They were appointed by the vassal, not by the feudal overlord. The group of vassals here was more homogeneous than in the territories to the north, as it consisted of warriors from the beginning of the crusades, coming especially from Westphalia, Mecklenburg, Pomerania and Holstein.¹⁸

The historian Paul Johansen has estimated that some 80% of the vassals in the northern parts of Estonia were Germans, while 10% were Danish and 10% Estonian. After 1238, not many Danes found their way into Estonia. The Danes normally came from southern Jutland; they were, however, already Germanized in the second generation. Their properties were situated mostly in Harrien and in the province of Reval. It is interesting that Estonians are mentioned among the upper social strata. The source, the *Liber Census Daniae* from 1241, uses the nation's name 'Esto' or the first name of the original native Estonian vassal. Perhaps there existed more native Estonian vassals than this important source documents. To the south of Estonia, in Livonia, an overwhelming part of the elite was constituted by Germans, with a few old noble native families.¹⁹

When the Danish Crown had been rendered weak following the imprisonment of king Valdemar in 1223, the Germans had used the opportunity to install their own vassals. After regaining the government in northern Estonia, the Danes therefore undertook a revision of the holders of properties. According to Paul Johansen the Christian baptizing lists were used. Records from 1238 and 1241 clearly document that the Danish king took over estates and property especially in the eastern part of Wirland, from the Teutonic Order.²⁰

The Danish king was the feudal overlord of the vassals and all rural land in the northern provinces became the property of the monarch. Every new king had, in principle, to renew the hereditary fiefs and possessions of the nobility in Estonia. This was the case when Erik VI Menved renewed the possessions of the holders in 1314. King Christopher I had given his permission to the vassals to use German hereditary law in 1252. The feudal law of Erik VI Menved (1286–1319) was confirmed by his counsellors of the Realm and the Danish Parliament (Danehof) in 1315. Unlike in the different parts of the Holy Roman Empire, there was never

17 See footnote no. 16. – For the size and the economical system of Estonian villages, see Lang 2006

18 Tarkiainen 2008: 90

19 Johansen 1933; Tarkiainen 2008: 90

20 Johansen 1933; Riis 2003: 83ff

a feudal system with fiefs and vassals in Denmark. It is therefore understandable that the feudal law introduced in the rural areas of Estonia did not originate from Danish law. The model derived from Saxon and Livonian feudal law, given by the Order of the Swordbrothers. The law was called *The Feudal Law of Erik and Valdemar* and had probably been used earlier, perhaps combined with royal ordinances. The Charter is preserved only in Low German versions, but because Latin was used in all other letters from the Danish government to Estonia, the original must also have been in Latin. In the prologue to the charter, the king referred to rights presumably issued orally by his predecessor to the Danish throne, which he himself had stated in writing and further supplemented. Why the Charter was named after King Valdemar II Sejr (the Victorious) is not clear, but it might go back to ordinances from his reign, or in 1315, the intention may simply have been to endow the law with antiquity, King Valdemar II being viewed as the great lawgiver.²¹

The fiefs in Estonia were inheritable. If a vassal had a son, he would inherit the fief; daughters were not allowed to inherit fiefs. If a vassal died without leaving a son, the fief would revert to the Crown. These stipulations were common to all feudal laws in the northern part of the Holy Roman Empire, including the Livonian territory. In Denmark, fiefs and feudal law were unknown; female succession was recognized and was subject to the administration of the parents. The property, including land, was divided, with one-third passing on to a daughter and two-thirds to a son. In 1329, when King Christopher II granted the Estonian vassals the special privilege of female succession, but stressed the condition that when the daughter died, the fief should revert to the Crown, it might be seen as inspired by Danish law. Although the fief later reverted to the hands of the Crown, there can be no doubt that this was a very important and precious privilege. This is underlined by the fact that when the Teutonic Order bought Estonia in 1346, the Grand Master confirmed the privilege. The possibility exists that one of the daughter's children was allowed to take over the fief after her death, but the lack of sources does not allow us to go deeper into these aspects.²²

The lack of evidence concerning the Law in Estonia is regrettable. It is also not known how the law functioned in practice. Privileges, however, played an important role and were issued with respect to ownership of woods, tolls, payments, wrecks and warrior services. All these privileges all belonged to the Crown. Sometimes Estonian counsellors and vassals travelled to Denmark to negotiate with the central government. If the bishop of Reval or the vice-king was on a visit to

21 Bunge 1877: 4, 254ff

22 DD 2:10, no. 152. Vogt 2013

Denmark, he represented the Estonian interests. In 1277 or 1288, and later on, royal counsellors were present when privileges were granted.²³

In questions related to foreign policy, Estonia was quite autonomous, as shown by Thomas Riis. The important institutions were the central government in Denmark, the vice-king and the royal counsellors, the vassals as corporations and, sometimes, the bishop of Reval. In many cases they acted together, often by themselves. The vice-king aimed 1278–79 together with the archbishop of Riga, the bishops of Dorpat (Tartu) and Ösel, the Landmaster of the Teutonic Order and the city of Riga at directing the Russian trade over Estonia and Livonia. In most cases, foreign policy issues were handled by the central government in Denmark.²⁴

During the Interregnum of 1332–40, when there was no king in Denmark and until 1344 no Vice-king in Estonia, the counsellors governed the dukedom with great autonomy. They controlled the castles and made decisions concerning the vassals. When an Estonian uprising of peasants took place in 1343–45, the counsellors and the vassals were forced to elect a protector, the Livonian Landmaster of the Teutonic Order.²⁵

Different law courts can be identified in Danish Estonia. The cities had their own juridical courts, and the vice-king and the royal counsellors acted as judges. Questions concerning fiefs were to be settled by the king as the feudal overlord. Most cases dealt with estates and the possession of land. It has been suggested that this type might be seen as a parallel to the later Danish (provincial) law court (‘retterting’). Another court was responsible for the whole dukedom, a parallel to the Danish parliament (‘danehof’). It is, however, not possible to draw the conclusion that these law courts derived inspiration from Denmark.²⁶

The vassals had the right to small fines from their fiefs. Among the elite in Estonia, it was possible to free oneself from punishment by death or exile after manslaughter and other high-ranking crimes by paying 40 marks to the king. This was a normal procedure in Denmark, as also existed in Estonia. It seems that we have here an example of transfer of Danish law to Estonia, where feudal law was otherwise taken from Livonia.²⁷

An interesting source from 1306 has survived that tells about the legal praxis to be followed when a person was accused of homicide, incendiary acts or robbery.

23 Riis 2003:82f

24 Riis 2003:86

25 Riis 2003: 86; Skyum-Nielsen 1971: 204, 207ff. See also Vahtre 2006

26 Riis 2003:89

27 Skyum-Nielsen 1971:119. See also DD 3:2, no. 228

All brothers of vassals, their children, servants and households were included in the stipulations. It must be supposed that these procedures were commonly applicable to Danish and German vassals and their 'familia'. The accused had to meet before the judge and the court and have their cases proved. A commission chosen from among the royal vassals in 1306 suggested these stipulations, which were confirmed and to be followed for the next two years. The most important procedure, by far, was the one to be followed if a native Estonian was accused; he could prove his innocence only through the ordeal by fire ('jernbyrd').²⁸ We do not know how and when this procedure was introduced. Estonia was conquered four years after the ordeal by fire was forbidden by the Fourth Lateran Council.²⁹

The origin of the ordeal by fire was no doubt linked to the Christian faith, and this makes it more unlikely that this practice goes back to old Estonian pagan tradition. The native Estonians were newly converted to Christianity and this might, as Helle Vogt has suggested, explain why the ordeal by fire was introduced with the consent of the church, and according to the charter from 1306, the vassals agreed to follow the procedure following the advice of Henry, Bishop of Reval, and the vassals of His Royal Majesty King Erik VI Menved. The ordeal by fire was known in Denmark until the early thirteenth century in cases where a wife was accused of adultery by her husband and he could support the accusation with two witnesses. The reason for the introduction of the ordeal by fire might be that it was considered to be a good practice to document the supremacy of the Christian God among the native newly converted Estonians. The ordeal by fire mentioned in 1306 was perhaps also imposed to sharpen the penal law and the penal procedures among the Estonians as a special group in Estonian society.³⁰ If a peasant had stolen, he was to lose his one hand. It seems that this stipulation was influenced by the city law of Lübeck.³¹

The town of Reval was founded in the years around 1230. The townspeople were mostly all German, besides a few Estonians. In 1248, King Erik IV Plovpenning confirmed the privileges related to secular and clerical matters given by his father and the city was allowed to use the privileges after the Lübeck model. His successor on the throne, Christopher I, confirmed with the consent of the Danish parliament in 1255 that Reval could use the city rights of Lübeck. Reval was interestingly more linked to Lübeck than to Visby and Riga. In 1265, the

28 DD 2:6, no. 6

29 Vogt 2013

30 Vogt 2013

31 DD 2:2, no.213. Skyum-Nielsen 1971: 207

town council was made independent of Danish royal power by a charter issued by Queen Margarethe Sambiria. The building of a town hall in Reval in the mid-thirteenth Century cannot have been unknown to the Danish king and his counselors. In 1310, the town was fortified under the guidance of the Danish counsellor of the Realm Johannes Kande. The town privileges were further confirmed by the Danish king in 1278 and 1282.³²

Queen Margarethe Sambiria showed great interest (1262–66) in the fortification of Reval and provided financial support to local institutions. Reval developed into one of the most important trading cities in this part of the Baltic and hosted many trading people on their way to Novgorod. In 1282, Erik V. Klipping and his mother took the initiative to produce a precious copy of the law code of Lübeck. This manuscript has survived and is famous for its rich portraits of the two royal patrons. Reval also strove to introduce the same church-articles as Lübeck, in which the city succeeded in 1284. The town hall was extended during the first quarter of the fourteenth century. The royal favouring of Reval continued during the reign of King Erik VI Menved, who wanted Denmark to expand and manifest herself in the Baltic trade.³³

King Valdemar II Sejr (the Victorious) had founded the diocese of Reval in 1240 and appointed the bishop. Although this was against Canon Law, the system was used until 1277, when Queen Margarethe Sambiria handed over her right to nominate the bishop to the Chapter of Reval. Her son Erik V Klipping confirmed the document in 1283, but formally the question remained unsolved during the Danish epoch in Estonia. The income of the Church was based on tithes as in Denmark and the other Scandinavian countries and on taxes paid by the peasants. The model for the Chapter of Reval was taken from the Chapter of Roskilde, with a deacon as its leader.³⁴

The Dominicans were especially active in Estonia, helping to build the young Estonian church. A group of Dominicans arrived in Reval in 1229 from Denmark, but the founding of a new monastery was given up after some years. It was in 1246 that the founding of a Dominican monastery with Danish and Swedish brothers first succeeded. The Dominicans were well qualified for missionary work as they were all priests.³⁵

The Cistercians were also active in Estonia with their missionary work, but they established a manorial system in some of the Estonian provinces. As shown

32 Riis 2003: 86; Böckler 1999: 221, 225

33 Danske Korstog 2004: 298f; Böckler 1999: 222; Skyum-Nielsen 1971: 74, 308

34 Riis 2003: 82; Skyum-Nielsen 1971: 119

35 Riis 2003: 79

by Kersti Marcus, the Cistercians from the monastery of Falkenau built a grange ('grangium') in Alp in the county of Jerwen (Järvamaa), which was an isolated place near the Danish border, surrounded by marshland. This part of central Estonia was under papal control during the 1230s and afterwards, under the Teutonic Order. Two other granges possessed by the Falkenau monastery were located on Danish territory, one not far from Wesenberg (Rakvere), from where the monks obtained valuable timber, and the second on the coast of Wirland (Virumaa), which gave them access to iron production and salt water fishing.

Falkenau was not the only monastic community owning land in this region. The Danish Duke Knud had donated the territory near the eastern border of Harrien county (Harjumaa) to the Gotlandic Cistercian monastery of Roma. By the end of the thirteenth century, the monks possessed most of the land in Kusal (Kuusala) parish,³⁶ and they influenced the building of churches in Jerwen. The possessions of the Gotlandic Cistercian monastery of Roma grew to about one-third of Järvamaa, which might also be interpreted as a tactical manoeuvre. The tradesmen from Gotland thus maintained friendly relations with the Danes as well as the Teutonic Order.³⁷

The Cistercian monastery of Dünamunde near Riga also obtained extensive areas in the western part of Harrien. The strategic locations of the granges in the Estonian landscape indicate cooperation between the monastic communities and the Danish authorities. The grange named Alp was thus exchanged for other villages at the request of the landlord. It has been suggested with good reason that the Danish king was the only authority in thirteenth century Estonia who favoured Cistercian settlements in his territory.³⁸ Here, the Danish kings could rely on experience, especially from Pomerania among other territories.³⁹

To conclude, from the very start, after 1219 and up to the end of the Danish epoch in 1346, the Danish king and his representatives in Estonia (the bishop, the vice-king and the royal counsellors) relied on feudal law, with inspiration from Saxony and Livonia, as well as on hanseatic privileges for the towns. The feudal system in the Danish-controlled provinces does not seem to have been as restrictive as in other parts of Livonia, where the German vassals dominated the fiefs. The Chapter in Reval was founded after the model of Roskilde and the king retained for long his power to nominate the bishop together with the Chapter. The town of Reval

³⁶ Marcus 2009: 3-30

³⁷ Marcus 1998: 167-177

³⁸ See footnote no. 36

³⁹ Olesen 2009: 49-58

became one of the most important towns in the Baltic in the thirteenth century and was influenced by the city rights of Lübeck.

There are many examples of the Danish king as ruler and lawgiver in Estonia, often in cooperation with his royal counsellors. The territory was seen as a part of the Danish Realm. However, when it comes to the question of transfer of law from Denmark, the answer is clear: There are, on the whole, very few traces of direct loans from Danish laws. Only the fine of 40 marks was perhaps taken from Denmark. The use of the ordeal of fire for native Estonians to prove their innocence according to a charter from 1306 might go back to the times of the Christian conversion, when Estonia was conquered in 1219. On the whole, there was a sharp distinction between the vassals and their families and households on the one hand and the native Estonians on the other.

The king's Danish men in the most important castles such as Reval, Wesenburg and Narva seem from the very start to have been treated as a special group with extensive royal privileges, but at the end of the thirteenth century, this small group disappeared from the documents. The fiefs and the manors belonging to the vassals were heritable, and there are a few examples of female succession to land. This could possibly be due to the Danish recognition of female succession too.

Most of the vassals in the Danish-dominated parts of Estonia were Germans, but there were about 10 percent Danish vassals and native Estonian vassals too. Among the clerics, the percentage was a bit higher. Cistercians and Dominicans played an active role in building the young Estonian church under the leadership of the bishop of Reval, but they also manifested themselves by the establishment of manorial systems in the countryside. King Valdemar sold the Dukedom of Estonia to the German Teutonic Order in 1346, thereby ending an important epoch in Danish medieval Baltic history.

Bibliography

- Acta Processus Litium inter Regem Danorum et Archiepiscopum Lundensem*, ed. Alfred Krarup & William Norvin, Copenhagen 1932
- Albrechtsen, Esben, Frandsen, Karl-Erik, Lind, Gunner, *Konger og Krige 700-1648. Dansk Udenrigspolitik Historie 1*, ed. Carsten Due-Nilsen, Ole Feldbæk, Nikolaj Petersen, Copenhagen 2006 (2. Edition)
- Andersen, Tyge & Raudkivi, Priit, Games of Power in Northern Estonia 1219–1238, in: *Acta Historica Tallinnensia* 2008: 3-24
- , From Saxo Grammaticus to Peter Friedrich Suhm. Danish views on medieval Estonian history, in: *Acta Historica Tallinnensia* 2007: 3-29

- Blomkvist, Nils, *The Discovery of the Baltic. The Reception of a Catholic World-System in the European north (AD 1075-1225)*, Leiden- Boston 2005
- Bregnsbo, Michael & Jensen, Kurt V., *Det Danske Imperium. Storhed og Fald*, Copenhagen 2004
- Bullarium Danicum. Pavelige Aktstykker vedrørende Danmark*. I-II, ed. Alfred Krarup, Copenhagen 1931–32
- Bunge, Friedrich Georg von, *Das Herzogthum Estland unter den Königen von Dänemark*, Gotha 1877
- Böckler, Teddy, *Tallinna Raekoda. Uurimine ja restaureerimine 1952–1996*, Tallin 1999
- Christiansen, Eric, *The Northern Crusades. The Baltic and the Catholic Frontier 1100–1525*, London and Basingstoke 1980
- DD = *Diplomatarium Danicum*, I-II-III, ed. Det Danske Sprog- og Litteraturselskab, Copenhagen 1938ff
- Estlandliste des Liber Census Daniae*, ed. Paul Johansen, Copenhagen-Reval 1933
- Eesti Ajalugu II*, ed. Anti Selart, Tartu 2012
- Heinrichs Livländische Chronik*. 2nd edition, bearbeitet von Leonid Arbusow & Albert Bauer, Hannover 1955
- Helk, Vello, *Estlands Historie – kort fortalt*, Odense 1993 (=Odense University Studies in History and social Sciences vol. 170.
- Jørgensen, Poul Johannes, *Dansk Retshistorie. Retskildernes og Forfatningsretten Historie indtil sidste Halvdel af det 17. Aarhundrede*, Copenhagen 1971 (5th Edition)
- Lang, Valter, Die Wacke im vorzeitlichen und mittelalterlichen Estland. Ein Beitrag zur Erforschung der vorzeitlichen Bodennutzung und des Steuersystems, in: *Forschungen zur Baltischen Geschichte I* (2006): 7-28
- Lind, John, Den faldt fra himlen ned, in *Skalk*: 2001,6: 20-27
- Lind, John, Jensen, Carsten Selch, Jensen, Kurt Villads, Bysted, Ana L., *Danske Korstog. Krig og Mission i Østersøen*, Copenhagen 2004
- Markus, Kersti, Die «Gotlandisierung» der Landschaft Jerwen in Estland, in: Niels Blomkvist (ed.), *Culture Clash or Compromise? The Europeanisation of the Baltic Sea Area 1100–1400 AD*, Papers of the XIth Visby Symposium held at Gotland Centre for Baltic Studies, Gotland University College, Visby October 4th-9th, 1996, Västerwik 1998: 167-177
- Markus, Kersti, Missionaries or Manorial Lords? The Role of Cistercians in Thirteenth Century Estonia, in: *Acta Historica Tallinnensia* 2009: 3-30
- Møllerup, William, *Danmarks Forhold til Lifland fra Salget af Estland til Ordensstatens Opløsning, (1346–1561)*, Copenhagen 1880

- Olesen, Jens E., Der Einfluss dänischer Klöster auf den Ostseeraum, in: *Glaube, Macht und Pracht. Geistliche Gemeinschaften des Ostseeraums im Zeitalter der Backsteingotik*, ed. Oliver Auge, Felix Biermann, Christofer Hermann, Rahden/Westf. 2009 (=Archäologie und Geschichte im Ostseeraum 6): 49-58
- , A Danish Medieval «Empire» in the Baltic (1168-1227)?, in: Steinar Imsen (ed.), *The Norwegian Domination and the Norse World c.1100–c.1400*, 'Norgesveldet', Occasional Papers No. 1, Trondheim 2010: 263-289
- , Danish Crusades towards the eastern Baltic region until c. 1250, in: Steinar Imsen (ed.), *'Ecclesia Nidrosiensis' and 'Noregs veldi'. The role of the Church in the making of Norwegian domination in the Norse World*. 'Norgesveldet' Occasional Papers No. 3, Trondheim 2012: 347-364
- , Die frühen Grafen von Holstein-Schaumburg und der Kampf um Holstein gegen die dänischen Könige im 12. und 13. Jahrhundert, in: Stefan Brüdermann (ed.), *Schaumburg im Mittelalter*, Bielefeld 2013, pp. 154-170.
- Poulsen, Bjørn, Tribute as Part of the Financial System of the Medieval Danish King, in: Steinar Imsen (ed.), *Taxes, tributes and tributary lands in the making of the Scandinavian kingdoms in the Middle Ages*, 'Norgesveldet', Occasional Papers No. 2, Trondheim 2011: 279-292
- Riis, Thomas, *Studien zur Geschichte des Ostseeraumes IV. Das mittelalterliche dänische Ostseeimperium*, Odense 2003
- Saxo Grammaticus, *Danmarks Krønike*. Fr. Winkel Horn (ed.), 3rd ed., Copenhagen 1979
- Skyum-Nielsen, Niels, *Kvinde og Slave. Danmarkshistorie uden retouche 3*, Copenhagen 1971
- , Estonia under Danish Rule, in: Niels Skyum-Nielsen & Niels Lund (ed.), *Danish Medieval History – New Currents*, Copenhagen 1981: 112-135
- , *Fruer og vildmænd I. Dansk Middealderhistorie 1250-1340*, Copenhagen 1994
- Tarkiainen, Kari, *Sveriges Österland. Från forntiden till Gustav Vasa. Finlands svenska historia 1*, Helsinki, Stockholm 2008
- Vahtré, Sulev, Die Briefe an den Papst über den Estenaufstand 1343, in *Forschungen zur Baltischen Geschichte 1* (2006): 45-55
- Vogt, Helle, Legal Encounters in Estonia under Danish Rule, 1219-1347, in: Kurt Villads Jensen, Kirsti Salonen, Helle Vogt (eds.), *Cultural Encounters*, Odense 2013: 237-243

Part 2

A troublesome tradition



Chapter 7: Dull as ditch water or crazily romantic: Scottish historians on Norwegian law in Shetland and Orkney

Brian Smith

Shetland's polity from the 1270s onwards was rather orthodox, administered successfully by royal servants and the local community at lawthings in the islands.¹ There were local variants of national arrangements, of course: from the 1290s onwards, Shetland's land divisions and valuations were a compromise between the 'markebol' concept of eastern Norway and the old pennyland arrangements of the islands.² Since Shetland had been confiscated from the earls of Orkney in 1195, and had henceforth been administered directly from Norway, it is not surprising that there was modernisation.

The situation in Orkney is more obscure. We don't know a great deal about the polity there after 1195, but we can surmise that matters were different. We have records of a Shetland lawthing from 1299,³ but we don't encounter an Orcadian one until 1496.⁴ There is no sign of revaluation of land. It is likely that the influence of kings on local institutions in Orkney took longer to mature than in Shetland.

Orcadian historians like J. Storer Clouston imagined that earls like Thorfinn Sigurdsson and Rognvald Kali Kolsson had devised local Orcadian laws, in the eleventh and twelfth centuries, and that such codes prevailed in the islands until 1611.⁵ However, that is not the case; in the early fifteenth century, Orcadians were waxing lyrical about Norwegian laws, 'iura antiqua', confirmed for them by King Olav in the 1380s.⁶ But we don't know enough about how the national codes and their administration worked in Orkney.

¹ Smith 2009 and 2012

² Smith 2000: 1–18; Smith 2002

³ *Diplomatarium Norvegicum*, 1, no. 89; Ballantyne and Smith 1999: 1–2

⁴ Clouston 1914: 74

⁵ Clouston 1932: 317

⁶ *Diplomatarium Norvegicum*, 6, no. 423; Clouston 1914: 48. Not St Olav, as Ryder (1989: 195) imagined

Scottish historians have dealt with this subject in an eccentric way. They have argued that Norwegian or local law in the islands was a panacea, wielded and submitted to by peasant proprietors, the so-called udallers, until the 1460s. But afterwards, they argue, its perfect provisions were subverted by the malign feudal codes of Scotland.

Take William Jardine Dobie, for example, a solicitor and later a sheriff in the Scottish Lowlands who wrote at length about Norwegian law in Shetland and Orkney. Dobie had a nimble mind, but, like others, he lurched from the minutiae of the records to romance. His invariable concern was the plight of islanders oppressed by Scottish law: or, rather, the ‘conflict of [udal and feudal] laws’ as he entitled an article written in 1931.⁷ He deplored the ‘taint of Scottish influence in anything dated after [1468–69]’⁸: an extreme position. Dobie’s day-to-day judgments, in the sheriff court of Lanarkshire, were indeed as dull as ditch water⁹; but when he wrote about islands, his prose became purple.

Dobie and those like him erred by regarding law in Orkney and Shetland in that tendentious way. They never explained the nature of the alleged conflict between Norwegian and Scottish law. This chapter attempts to present a rational account of the subject.

The *Magnus Code* in Shetland

It was not until the 1960s that there was a clear understanding in Scotland that Shetland and Orcadian law in the Middle Ages was the code of Magnus the Lawmender, no doubt received in the islands in the 1270s. Writing ten years earlier, so skilful a historian as Gordon Donaldson had imagined that they had been administered according to the earliest Norwegian laws, as translated by Laurence Larson in 1935.¹⁰

Then, in 1963, Knut Robberstad advised the defenders in the St Ninian’s Isle treasure case about the subject.¹¹ By dint of exact scholarship, Robberstad made it clear that the *Magnus Code*, and thus the processes around its creation and publication in the late thirteenth century, was the context in which we

⁷ Dobie 1931

⁸ Dobie 1936: 451

⁹ Dobie 1957: *passim*

¹⁰ Donaldson 1958: 7, 10

¹¹ Smith 1973: 157 and note

must view the legal history of the isles in the Middle Ages and early modern times.

For more exact information about this context, we must turn first to three documents, dated 1298, 1299, and 1307. Although much has been said about these records in the past fifteen years – Barbara Crawford edited a book about just one of them, in 2002¹² – hardly any attention was paid to them till then. That is despite the fact that P.A. Munch had published a reliable text and translation of two of them as early as 1839.¹³

I shall mention the first two records briefly. In the well-known *Seyðabrævið* of 1298, we find that Duke Håkon of Norway had sent the Shetland lawman to the Faroes. Hakon listened to what the lawman and the Faroese bishop had to say about what was wrong with the agrarian law there, and issued a letter to assist the Faroese.¹⁴ It is clear that Shetland was already well provided with officials and expertise, in line with the royal project of regularising law and administration in the scatlands.

A year later, in a ‘rannzaksbref’ issued by the lawthingmen of Shetland, we discover the sheriff of Shetland defending himself against a charge of corruption, following what I’ve already described as a revaluation of arable land in the islands under Håkon’s auspices. Again, a strong impression is given of the royal new broom at work.¹⁵

Finally, the diploma of 1307 deals in detail with a dispute between the sheriff and yet another woman, Bjorg of Cullivoe, in the Shetland island of Yell.¹⁶ Bjorg had incurred a heavy fine, and, having failed to fulfil the provisions of a compromise agreement with the sheriff, appealed to the lawthing. This document has recently been the subject of close examination by Knut Helle and Kåre Lunden, and throws light on the constellation of forces, and the stresses and strains between classes, in the island society.

Helle argued that the sheriff had been constrained by the law to be relatively lenient with Bjorg, in her plight,¹⁷ but Lunden demurred. He proposed that difficulties in understanding the currencies described in the record concealed the fact that the sheriff was not being lenient at all.

Furthermore, Lunden pointed out, like others, that it was not only the lawman

¹² Crawford 2002

¹³ Munch 1839: 488–89, 496–97

¹⁴ Poulsen and Zachariasen 1971: 45

¹⁵ Smith 2002

¹⁶ *Diplomatarium Norvegicum*, 1, no. 109; Ballantyne and Smith 1999: 2–3

¹⁷ Helle 2002: 53

and his assessors who considered Bjorg's complaint at Tingwall in 1307, and issued a doom about it, but also the king's liegemen – a process certainly not envisaged by the *Magnus Code*.¹⁸

We get a strong impression, from these two diplomas of the Shetland lawthingmen, that Shetland in the high Middle Ages was a society where aristocrats – the sheriff and the king's liegemen – were in control. Of course, they had to observe the letter of the law, to some extent, but it is clear that they could bring their class influence to bear in judicial situations. In 1299, for instance, the seal tags on the lawthingmen's 'rannzaksbref' were snipped from a letter that had belonged to the sheriff himself.¹⁹

These conclusions are a corrective to the romantic account by Dobie, who imagined that Norwegian law had been perfect not only in its form but in its execution. The Scottish historians were willing to envisage social classes at work in the island society, but they thought that oppressive aristocrats, manipulators of law, didn't come on the scene until the 1460s, and that they invariably had Scottish surnames when they did. The travails of Bjorg of Cullivoe show that that was not the case.

Uproar in Orkney

There is a gap in our records until 1420 or so. No doubt the Black Death and its aftermath had a deadening effect on civic affairs in the islands, as elsewhere. But in the 1420s, in Orkney, we suddenly have a mass of evidence which shows us how the local society was by then regarding the law and its infringements.

The occasion was the arrival of David Menzies, a new governor, in Kirkwall, appointed by a sister of Earl Henry Sinclair I of Orkney. Chaos ensued in the islands' body politic. We have a lengthy complaint by the people of Orkney, taken by their envoys to the queen in Copenhagen around 1425, which lists Menzies' depredations in vivid detail.

In a letter written around the same time, the Orcadians stipulated that²⁰

no judge or governor among us shall presume to introduce any new laws, customs, or novel constitutions whatsoever, but that they shall be irrefragably bound to observe the ancient laws approved by his highness, King Olav, and the ancient constitutions and customs, as well as the royal letters sent to us which are commonly called among us the letters of law or rectitude, or corrective letters.

¹⁸ Lunden 2003: 304–14

¹⁹ Hødnebo 1960: 108

²⁰ *Diplomatarium Norvegicum*, 6, no. 423; Clouston 1914: 48

In their complaint we hear much about the governor's highhandedness with that law. A good example concerns the occasion when, as the Orcadians reported, their lawman was imprisoned in the Sinclairs' castle in Kirkwall for a trivial offence. When he got out, Menzies 'sent foreigners [*vtlaenska mæn*] from Caithness to the lawman's homestead', ransacked his house and private chapel, and then locked him up again.

'[T]his he did', the Orcadians said,²¹ 'because he would not give [Menzies] the seal of the land, so that he might write under it what he liked.' The lawman sat in prison until he '[promised] to be [Menzies'] man, and until his wife had laid the seal and the law book on the altar of St Magnus.' Menzies took the book and the seal, 'and appointed another lawman, who reluctantly took [that task] upon himself'.

The historians have construed these events as Scottish oppression. It is more accurate to say that the Orcadians were complaining about the oppressions of *foreigners*, the word they used to describe their cousins from Caithness. Steinar Imsen has pointed out that indignation about foreign governors, men who didn't respect local law and customs, was endemic in Norway and Sweden at the same time.²²

It wasn't a question of wicked Scotsmen. In 1418, David Menzies' brother-in-law, John Sinclair, had received a feudal grant of Shetland. John promised to 'allow the men and inhabitants of that land to enjoy freely their ancient rights, customs and laws, and [that he would] defend them'.²³

Two years later, Thomas Tulloch, the bishop of Orkney, a native of Angus in Scotland, had received a grant of the islands from King Erik. In his letter of acknowledgement, which commences 'We, Thomas Tulloch', he suddenly transforms himself into 'we, the before named people of the before named Orkneys', and undertakes to 'keep law and justice according as the Norn law book mentions, and the old obligatory custom of the country hereto has been'.²⁴

There is no knowing if Thomas Tulloch or John Sinclair adhered to their promise, of course, but these examples show that Scots had no conscientious objection to the use of a Norse law book in the islands.

21 *Diplomatarium Norvegicum*, 2, no. 691; Imsen 2012: 28

22 Imsen 2012: 9

23 *Diplomatarium Norvegicum*, 2, no. 647; Ballantyne and Smith 1999: 13–14

24 *Diplomatarium Norvegicum*, 2, no. 657; Clouston 1914: 31–32 (where the document is misdescribed)

New jurisdiction

Even after the wadset of the islands by Denmark to Scotland, in 1468–69, we find the same situation. Around 1486, James IV assured the king of Denmark that he had not altered and would not be altering the laws of the islands.²⁵ And in the early sixteenth century, there are several references to the use of the islands' old law book in Orcadian courts.²⁶ Two of these cases make it clear that the book wasn't just a textbook of principles, but was being used to record details of boundaries and the like – exactly like local Norwegian copies of the *Magnus Code* from the same and later periods.

We have a priceless document from Shetland from that post-wadset period: the record of a court held at Gardie in Mid Yell in 1538, where the lawman and lawrightmen pronounce a decision 'according to the Gullatings law', as they put it.²⁷ At one point in the proceedings, they make a computation using the old Shetland mark of 12 shillings, by then nearly obsolete, which had been the basis of the new Shetland valuation by Håkon Magnusson in the 1290s that I have already mentioned. Reading this document we might conclude that little had changed in the islands for a quarter of a millennium; in fact, we get an impression that there might have been more local autonomy than there had been in the high Middle Ages.²⁸

But things were due to change. One of the parties in the case was Gervald Willemsen, a native of Yell who apparently lived in Norway. When he arrived back in Bergen, with a copy of the Shetland court's decree for confirmation there, he found that he had become part of a scheme by King Christian III to install him in Shetland as his lawman. More than most Danish monarchs, Christian was determined to get Shetland and Orkney back, and the stratagem with Gervald was part of his campaign. But the campaign was a failure; and, more importantly, it looks as if the result of that failure was a decision by the king of Scotland to abolish the office of lawman in both groups of islands.²⁹ This was bound to have a dampening effect on the legal institutions.

However, the pace of change wasn't as rapid as the historians believed. In December 1567, the Scottish parliament considered a knotty problem: 'whether Orkney and Yetland [should be] subject to the commone law of this realme, or gif

25 Edinburgh University Library, Laing mss., La. III-322: 16–17

26 Clouston 1914: 82, 87–90, 93–94

27 Johnston and Johnston 1907–13: 70–3; Ballantyne and Smith 1999: 40–42

28 Imsen 1999: 59–60

29 Smith 2010: 52–53

thai sall bruke thair aune lawis'. They decided that the islands 'aucht to be subject to thair aune lawis'.³⁰ We have now arrived at a period authorities in Scotland were acting cautiously and sometimes helpfully with regard to their new subjects in the north.

In the 1570s, for instance, Nicol Oliverson, a man who had left Orkney four decades previously, came back to the islands to try to retrieve his father's property, which was now occupied by intruders.³¹ He took his case to Lord Robert Stewart, who was feuar of Orkney and Shetland, and thus in charge of courts in the islands. Robert evicted the intruders – but then installed a client of his own.

Nicol was furious. He headed for Edinburgh, and appealed to the Privy Council there. They heard his case in February 1576. Lord Robert's procurator explained that when his master had considered the matter, he had discovered that 'be the law and practik observit within the said cuntre of Orknay in tymes past, [the property] wes fund to appertene to the said Lord'.

The Council was perplexed by such law and practice. They ordered Robert to send his law book to Edinburgh for inspection. In April, they studied it, rejected Robert's judgment and reinstalled Nicol in his property.

Gordon Donaldson has argued that the Council was thus 'giving judgment in a dispute over udal property and taking Orcadian law into account – showing that uniformity of law and unity of jurisdiction did not necessarily go together'.³² It is an interesting way of putting it. But I would argue that they were also astonished by Robert's manipulation of an alleged local law, and were intervening to secure justice. Once more, we have to distinguish between law and the strong or weak individuals who administer it.

In Shetland, at exactly the same time, another corrupt governor, Laurence Bruce, a native of Perthshire in Scotland, was causing havoc. The lawman had gone; now Bruce turned his attention to the lawrightmen, and prevented them from doing their job.

The Shetlanders, led by the patriot Arthur Sinclair, complained to a royal commission in February 1577. The climax of their representations was as follows³³:

30 Ballantyne and Smith 1999: 126

31 *Register of the Privy Council of Scotland*: 2, 488–89

32 Donaldson 1984: 31

33 Ballantyne and Smith 1999: 223

[T]he hail communitie and inhabitantis of Yetland [they said] hes bene in tymes bygane, lyk as thai ar instantly, grevuslye rubbit, oppressit and spoliat of thair gudis and substance, be sic men as hes borne and beiris autoritie and offices abone thame, sic as chalmerlanis, fowdis, underfowdis, officiaris and utheris, prevat personis, bangstaris [bullies] ... pairtlie be wrangus and negligent ministratioun of justice, and pairtlie be wantyng of lauchfull lawrichtmen and lawmen, quhilk the said cuntrie was wount to haiff.

Once again, as in Orkney in the 1420s, the target of the complaints was corrupt governors, not Scottish law. The governors might be Scots; or they might not be. There is no doubt, if one reads the commissioners' report of those proceedings, that, Scots though they were, they were moved by what they heard from the Shetlanders about the brutal things that Bruce had done to them.

Last days

We are approaching the final days of Norwegian law in the Scottish islands. Bruce was removed, briefly; he returned to Shetland, but his wings had been clipped. There was a rumour around 1581 that Lord Robert might reinstall him, and the response of the Shetlanders on that occasion is instructive. The people of the parish of Dunrossness said:³⁴

[A]s to the [removal] of ony out of office, or inputting of ony utheris, thai refar the samin to my lord, to put in quhome his lordship pleissis: onele heirto have thai grantit thair assistance: that quhair as heirtofoir allegit lawis and injustice hes past over thame, that hencefurth sic may be repairit and amendit; and that quhasoevir gettis the superioritie (under my lord) over thame may brek all corrupt customis and restor the ancient libertie.

It is worth attending to the tone of this manifesto. The Shetlanders were nothing if not pragmatic. They deferred to Lord Robert's superiority, but they wanted their own old freedom as well.

To some extent they got it. There is ample evidence about the legal regime that succeeded Robert Stewart's in Shetland: that of his son Earl Patrick, whose court book for the years 1602-04 has been preserved.

³⁴ Ballantyne and Smith 1994: 16–17

There are two ways of looking at Patrick Stewart's regime. In 1950, William Croft Dickinson gave a paper in Lerwick entitled 'Odal rights and feudal wrongs'. It was devoted to the old idea that, after 1468, Scottish interlopers steadily subverted the islanders' rights. Dickinson took a look at Patrick's court book, and recoiled³⁵:

We see [he exclaimed] that the general administration has become practically identical with that of a mainland barony, with 'statutes' very similar to those laid down by a Scottish baron at the 'Whitsun meeting' of his court. ... The parish foud is much like the baron's 'baillie', and sometimes, like the 'burlawman' of the barony, acts 'with the neighbourhood'. ... But also we see how much the people are now at the will of the lord. No longer are the odallers men who own no superior. Now they must lead and carry peats to my lord's house; now they must provide boats, without payment, for my lord's adoes, and keep their boats where he wills; now they must 'gang' to my lord's work in the building of his castle at Scalloway.

Dickinson's account of Earl Patrick's court is eccentric. There is no doubt that, by the beginning of the seventeenth century, Shetland and its institutions had changed. The lawrightmen had become mere weights-and-measures officials, and the lawmen were by now a distant memory. Patrick was without doubt a hard task-master.

However, he still convened a lawthing in his castle at Scalloway every summer. Jørn Sunde has recently reconsidered a murder case that was heard there in 1602.³⁶ The court established that Adam Sinclair of Broo, a landowner, had fallen out with the murdered man the night before the deed was carried out, and subsequently gave his murderer a horse and money to escape.

How did the assessors deal with the matter? They took 'lang and mature deliberatioun, be the inspectioun of the chepturis of the law buik and parteikis of the contrie in sic caices'.³⁷ To be precise, as Sunde has shown, they consulted parts of Magnus the Lawmender's code about situations where a man broke a truce that he had sworn with another man. The Shetland lawthing was still using a law book, and consulting legal principles which had been published in the islands more than three centuries previously. Things were different in Shetland by 1602, but not as different as they might have been, or as Dickinson alleged.

³⁵ Dickinson 1954: 154–55

³⁶ Sunde 2012

³⁷ Donaldson 1954: 43

As is well known, the Scottish Privy Council abolished Shetland's 'foreign laws' in May 1611³⁸ – 'foreign and uncouth laws', as a representative of the new regime called them³⁹ – because of Earl Patrick's misdemeanours. Mulling over that event in 1932, Storer Clouston shed a tear. He said that the 1611 enactment⁴⁰

swept away once and for all the ancient 'Laws of the Country' – the laws which Earl Thorfinn the Mighty and Hakon had shaped, which Rognvald had amended ..., which a long succession of Lawmen and, after them, of Sheriffs had administered, and the Scottish Parliament had promised to preserve. It was the history of the Country of Orkney which ended here, and the annals of a Scottish county which began instead.

It is time to ask: What was the difference, the yawning chasm, between Norwegian and Scottish law as administered in the islands, which made Dobie, Dickinson and Clouston so lachrymose? The historians constantly make a distinction between virtuous 'udal' law in the islands and malign interloping 'feudal' law from Edinburgh. But what did that alleged distinction mean in practice?

When he discusses the period after 1560, Dickinson says: '[F]rom now onwards feudalization proceeds apace [in Orkney and Shetland], [and] is hastened and enforced in the second half of the sixteenth century by the Stewart earls. ... It is not long before we begin to hear of "odal rights and feudal wrongs"'.⁴¹ Strictly speaking, no one heard that phrase until 1860, when David Balfour, an Orkney landlord attached it to a long romantic essay about alleged Scottish depredations in the islands.⁴² When we try to make sense of it, as an explanation of what happened in the Northern Isles, we come to grief.

By 'feudalisation' our historians mean the process of leasing crown or church lands. '[O]nce the process of feudalisation had begun', Clouston said,⁴³

it spread like wildfire. Out of these Church and Crown lands were formed almost all the large estates found [in Orkney] from 1560 down to today. ... [T]he grinding tyranny of the Stewarts had so impoverished the odallers as to make impossible that system of inter-family purchase ... whereby the odal properties were for centuries

38 Ballantyne and Smith 1994: 261

39 Donaldson 1991: 158

40 Clouston 1932: 317

41 Dickinson 1954: 150

42 Balfour 1860

43 Clouston 1914: liii

prevented from falling altogether to pieces. They now burst like a shell. ... Thenceforth the feudal holders of the Church and Crown lands were the upper class ... while the 'gentlemen uthellaris' remained, at best, as 'peerie lairds' ... or, for the most part, sank into the tenant class.

There are two things to say about Clouston's argument. First, it applies more to Orkney than to Shetland. There were meagre royal and church estates in Shetland, and not much feuing of them. But my second point is more fundamental for our purpose. Clouston's portrayal of a burgeoning landlord faction in Orkney, with a shrinking class of peasant proprietors, is a sociological matter rather than a legal one. When the Scottish Privy Council abolished foreign laws in the islands in 1611, their aim wasn't to make life difficult for small landowners, as the historians imagine. It was more technical: to clarify legal matters in the north, so that, as they put it, 'all and sindrie the subjectis of this kingdome sould lieve and be governit under the lawis and statutis of this realme allanarlie, and be no law of foreyne countreyis'.⁴⁴

The historians imagined that Norway, and Shetland and Orkney, were places where 'vast' numbers of peasant proprietors flourished during the Middle Ages.⁴⁵ They didn't notice that the mother country and the islands were lands of tenants as well. Håkon Magnusson's revaluation of land in Shetland in the 1290s had the renting of land as its conceptual foundation.⁴⁶ When Clouston moans about the Orkney udallers 'sinking into the tenant class', he is displaying his own prejudices.

Scottish lawyers didn't have a fundamental objection to customary privilege with regard to land. Margaret Sanderson has written about the 'kindly tenants' of sixteenth-century Scotland, and the rights that they and their families established vis-à-vis the owners of land.⁴⁷ (The word derives from 'kin'.) Fascinatingly, Scottish lawyers came to regard the udallers of Orkney and Shetland as the same as their own kindly possessors. In 1615, we find Arthur Sinclair of Aith in Shetland, the leader of the complainants in 1577, along with his predecessors, described as 'kyndlie and native tenentis and possessouris' of their Shetland estates.⁴⁸

In 1620, the Scottish Privy Council, following another investigation of affairs in Shetland, expressed disapproval that 'the poore people and kyndlie tennentis and possessouris of the land' were being 'violentlie ejectit of thair kyndlie rowmes,

44 Ballantyne and Smith 1994: 261

45 Donaldson 1984: 35

46 Smith 2000: 9

47 Sanderson 2002: 1–8

48 Shetland Archives, SA2/261/12

without forme or ordour of law'.⁴⁹ There was no objection to small occupiers of land in Scotland, by lawyers or administrators, or unwillingness in principle to protect them, any more than there had been in Norway.

The problem throughout these centuries wasn't the contents of codes of law, whatever the historians imagined. It was the mistreatment of communities by administrators and other vested interests with power.

Afterwards

I end with an ironic example. In Shetland in the 1630s, Andrew Bruce, son of the corrupt governor of 1577, began to use what he called Danish law for purposes of his own. James Sinclair of Scalloway, son of the leader of the Shetland complainants in 1577, argued back. They were both Shetlanders.

What had Bruce been doing? He alleged that udal law was 'only a naicked possession without anie wreatten securitie'.⁵⁰ Why? Because, Sinclair averred, Bruce and his family had come by some of their estates by questionable means, and therefore had inadequate documentary titles.

All the udaillers, Sinclair explained, to mainteine thair possession have ane wretten securitie called ane schoundbill, efter the Danisch lawes, maid be the schireff with a considerable number of honest men and neighbours (answering lyk unto our service of ane air), efter the death of the udailler, seallit and subschrit be them, or then be the udailler befor his deceis, or on his dead bed, be ane bill of division, be way of testament, dividing his lands and moveables among his wif and children. [...]

And he remarked, sardonically, that 'non cane clame the priviledg of ane udailler, bot only the successors of old kyndly possessors' – that word again! – 'quhilk the said Andro Bruce cannot allege, because his father was the first and he is only the second man of his race that ever was in that countrie'.

What conclusion did Sinclair draw from this dispute? For him, Norwegian laws in the islands had outlived their usefulness.

⁴⁹ *Register of the Privy Council of Scotland*: 12: 263–64

⁵⁰ Shetland Archives, SC12/65/3

The Danisch lawes, he said, ought to have no respect heir now efter so long tyme since the annexation of the countrie of Yetland to the crowne of Scotland, bot ought to be altogether abolisched. ... And if such a rycht be allowit ... it will strenthen and encourage the ... oppressors to commit moe oppressions.

In some senses, however, Bruce had the last laugh. His absurd proposal that udal proprietors didn't need written titles has become received wisdom about the subject among legal historians.⁵¹ As time passed, and especially at the present day, more and more romantic nonsense is being uttered about Norwegian law in Shetland and Orkney.⁵²

One last word is that we should not imagine that law hovers above societies, perfect or imperfect codes unconnected with the classes and communities which subsist there. In discussing it, we need rational social history, rather than what G.R. Elton called 'lawyers' history of the law'.⁵³ In particular, a romantic interpretation of legal questions, the stock-in-trade of our historians, can never help us to disentangle what was going on.

Bibliography

- Balfour, David, *Odal Rights and Feudal Wrongs: a memorial for Orkney*, Edinburgh 1860
- Ballantyne, John H. and Smith, Brian, eds., *Shetland Documents 1195–1579*, Lerwick 1999
- , *Shetland Documents 1580–1611*, Lerwick 1994
- Clouston, J. Storer, *Records of the Earldom of Orkney*, Edinburgh 1914
- , *A History of Orkney*, Kirkwall 1932
- Crawford, Barbara, ed., *Papa Stour and 1299: commemorating the 700th anniversary of Shetland's first document*, Lerwick 2002
- Dickinson, William Croft, Odal rights and feudal wrongs, in W. Douglas Simpson, ed., *The Viking Congress*, Edinburgh 1954
- Dobie, William Jardine, Udal and feudal: the conflict of laws in Orkney and Shetland, *Juridical Review*, 43 (1931)
- , Udal law, in *An Introductory Survey of the Sources and Literature of Scots Law*, Edinburgh 1936

⁵¹ Dobie 1936: 452–53; cf. Ryder 1989: 307.

⁵² Smith 2003.

⁵³ Elton 1982: 152.

- , *Plain Tales from the Courts*, Edinburgh 1957
- Donaldson, Gordon, *The Court Book of Shetland 1602–1604*, Edinburgh 1954
- , *Shetland Life under Earl Patrick*, Edinburgh 1958
- , *The Court Book of Shetland 1615–1629*, Lerwick 1991
- , Problems of sovereignty and law in Orkney and Shetland, in David Sellar, ed., *Miscellany Two: Stair Society*, 35 (1984)
- Elton, G.R., *The Practice of History*, London 1982
- Helle, Knut, Thorvald Thoresson and the political and administrative circumstances in Norway in 1299, in Barbara E. Crawford, ed., *Papa Stour and 1299: commemorating the 700th anniversary of Shetland's first document*, Lerwick 2002
- Hødnebo, Finn, ed., *Norske Diplomer til og med år 1300*, Oslo 1960
- Imsen, Steinar, Public life in Shetland and Orkney, c.1300–1550, *New Orkney Antiquarian Journal*, 1 (1999)
- , The country of Orkney and the complaints against David Menzies, *New Orkney Antiquarian Journal*, 6 (2012)
- Johnston, A.W. and Johnston, Amy, *Orkney and Shetland Records*, 1, London 1907–13
- Lunden, Kåre, Syslemann Torvald Toresson mot husfrue Bjørg i Kollavåg i 1307, *Collegium Medievale*, 16 (2003)
- Munch, P.A., Geographiske og historiske notitser om Orknöerne og Hetland, *Samlinger til det norske folks sprog og historie*, 6 (1839)
- Poulsen, J.H.W. and Zachariasen, Ulf, eds., *Seyðabrævið*, Tórshavn 1971
- Ryder, Jane, Udal law, in *The Laws of Scotland: Stair Memorial Encyclopaedia*, 24, 1989
- Sanderson, Margaret, *A Kindly Place? Living in sixteenth century Scotland*, East Linton 2002)
- Smith, Brian, *Toons and Tenants*, Lerwick 2000
- , The 1299 letter about Papa Stour: a note, in Barbara E. Crawford, ed., *Papa Stour and 1299: commemorating the 700th anniversary of Shetland's first document*, Lerwick 2002
- , Udal law: salvation or romantic fiction?, *Shetland Times* (3 October 2003)
- , On the nature of tings: Shetland's law courts from the middle ages until 1611, *New Shetlander*, 250 (2009).
- , When did Orkney and Shetland become part of Scotland? a contribution to the debate, *New Orkney Antiquarian Journal*, 5 (2010)
- , Hákon Magnusson's root-and-branch reform of public institutions in Shetland, c.1300, in Steinar Imsen, ed., *Taxes, Tributes and Tributary Lands in*

the making of the Scandinavian kingdoms in the middle ages, Trondheim
2012

Smith, T.B., The law relating to the treasure, in Alan Small et al., eds., *St Ninian's
Isle and its Treasure*, 1, Aberdeen 1973

Sunde, Jørn Øyrehagen, Murder in Shetland in 1602, *Unkans*, 33 (2012)

Chapter 8: Notions of ‘udal law’ in Orkney and Shetland: From medieval Norse law to contested vestiges of customary rights within Scots law

Michael Jones

Introduction

The intention of this chapter is to examine ways in which the idea of ‘udal law’ developed in Orkney and Shetland from its medieval antecedents in Norse law. Udal law is in the twenty-first century considered by many to have become a vestige, consisting of no more than relatively insignificant customary elements within Scots law. For some, however, these customary rights remain as contested survivals of an ancient legal system. Drawing on concepts of historical legal geography, the chapter bridges legal history and cultural history. It is part of an ongoing study of how ‘udal law’ and related terms have been expressed in different types of text in different historical periods.

In 1985–87 and 1993–94, I received financial support from Norwegian research councils to undertake a project with the title ‘Geographical manifestations of udal tenure in Orkney and Shetland’. The aims of the research were four-fold:

1. To investigate traces of Old Norse land tenure in the cultural landscape through land use and other forms of resource use
2. To elucidate processes of historical–geographical change when one system of law is replaced by another, in this case Norse by Scots law
3. To identify mechanisms that lead to certain features of the old system surviving while others disappear
4. To illuminate interactions between central legislation and legal practice on the one hand and local customs and land tenure on the other

In 1996, I published an article on popular perceptions of udal law in Orkney and Shetland. Since then, I have written a number of articles discussing udal law in relation to landscape, contested histories, and claims for indigenous rights. In 2012, I published the entry on ‘udal law’ in *Scottish Life and Society: A Compen-*

dium of Scottish Ethnology.¹ This chapter is to a large extent based on these publications.

The term ‘udal law’ is used in two principal ways. In a broad sense, it is used to refer to a system of law in Orkney and Shetland based on the medieval Norwegian laws of the thirteenth century, specifically the *Magnus Code* of 1274 and the earlier provincial laws that it codified. In a narrow and historically more correct sense, it refers to certain survivals of the land tenure system that prevailed in Orkney and Shetland during the period of Norse rule from the ninth century until the islands were transferred to the Scottish Crown in 1468–69. Although Norse law continued to be practised until ‘foreign laws’ were abrogated by the Scottish Privy Council in 1611, feudal charters in accordance with the laws of Scotland became increasingly common in the later sixteenth century. Feudal conveyancing became the norm in the seventeenth century, yet certain practices associated with udal tenure have survived in vestigial form until the twenty-first century. While claims are made in some quarters that udal law can still be regarded as a separate system of law, the prevailing opinion among Scottish lawyers is that it is no more than rapidly disappearing survivals of customary land tenure within the corpus of Scots law.²

The question addressed in this chapter is: How has ‘udal law’ been conceptualized in legal, topographical–historical, and fictional texts concerning Orkney and Shetland in different historical periods? The chapter begins with a brief presentation of historical legal geography. This is followed by an examination of the characteristics of udal law as described in early twentieth-century legal commentaries, where the term ‘udal law’ gained currency. Although the term ‘udal law’ as such appears to be of relatively modern origin, the concepts associated with it derive from the Norse period. In an analysis of how different types of text refer to ‘udal’ and related concepts in six time periods from the twelfth century until the present, I examine how ideas associated with this terminology developed over time through the works of authors of legal, historical–topographical, and other types of literature.

1 Jones 1996a; 1996b; 2005; 2011; 2012a; b; c

2 Robberstad 1983; Sellar 1987: 191–94; Ryder 1989: 193–99; T. Smith 1989: 222–25; Jones 1996b: 5, 8; 2012a: 390, 393–94, 406–07

Historical legal geography

My interest in udal law is not that of a lawyer concerned with determining the letter of the law, but rather in udal law as a cultural phenomenon. My approach is that of the historical geographer. Put shortly, historical geography is the study of historical phenomena from a geographical perspective. Among central fields of study for geographers are spatial patterns and distributions, places and regions, landscapes and human–environment relations, representations of human surroundings, and human practices in specific locations. Historical geographers study geographical phenomena in the past, how they have changed over time, and how present-day geographical situations reflect the legacy of the past.

Theoretically I have been inspired by developments in the sub-discipline of legal geography, or the geography of law.³ Legal geography is concerned with the complex interactions between law, society, and the geographical environment. Law is understood as including both formal law, i.e. statutory and common law, and informal law, including local legal cultures, customary rights, and folk law. My study of udal law engages with both formal and informal law. Legal geography is further concerned with the social dimension of law, particularly ways in which law empowers and disempowers different social groups in different places. Any form of land tenure involves relationships between individuals and social groups with regard to the administration and ownership of land and associated resources. Udal tenure involves particular social practices and rights related to land in Orkney and Shetland.

The geographical dimension of law is manifested in several different ways. First, legal categorization helps to fashion the character of places through naming and bounding. Property boundaries and the naming of different landed properties and categories of property strongly affect the use of the land. For example, under udal tenure, the boundaries and status of foreshore in Orkney and Shetland are different than on the mainland of Scotland, which differs again from England.⁴ Second, specific legal practices may contribute to a region's character, for example the acceptance among Scottish lawyers that there are certain peculiarities of land tenure in Orkney and Shetland. These have symbolic connotations for many inhabitants of the islands who have strong feelings of regional identity associated with the Norse past. Third, law can be manifested in the physical landscape through buildings and meeting places, such as parliaments and law courts, signs and

³ Jones 2005: 95–96; 2006; 2012a: 389

⁴ McGlashan et al. 2004

decorations, and field systems and boundary markers associated with landholding patterns. In Shetland, for example, public buildings, as well as the welcoming sign in the harbour, are decorated with the islands' coat-of-arms displaying Viking imagery and the slogan from *Njál's Saga*, 'Med lögum skal land byggja' ('By law shall the land be built' or 'dwelt in'), found also in several of the Scandinavian medieval provincial or 'landscape' laws.⁵

Udal law in early twentieth-century legal commentaries

The first modern legal commentary titled 'Udal law' was written by J.P. Drever and appeared in *Green's Encyclopædia of the Law of Scotland* in 1900. Drever was an Orkney solicitor with a practice in Kirkwall from 1884. He was a student of Norse law, history, and language and corresponded with Norwegian historians of his time. *Green's Encyclopædia* became a standard reference work on Scottish law with the publication of the first edition in 14 volumes between 1896 and 1904, followed by new editions in 1909–14 and 1926–35. A revised version of Drever's entry appeared in the encyclopaedia's second edition in 1914 and again in 1933. Drever also wrote an article on 'Udal law and the foreshore' in the *Juridical Review* in 1904.

According to Drever, 'udal law' consisted of survivals of 'native law' coexisting with Scottish feudal law. He notes that this 'native law' was Norse in origin and hence 'foreign' in relation to Scottish law. He discusses a number of features of 'udal law'. Udal landowners, or 'udallers', held hereditary estates derived from 'primitive occupation' with the 'right of absolute property'. Udal tenure was allodial; it was not dependent on a title from the Crown and not subject to a feudal superior. A written title was not deemed to be essential, although the title had to be derived from a lawful right. Even where 'udal' land had been granted a feudal title, as had occurred frequently in the seventeenth century, this was not sufficient to transform 'udal' land into feudal land. Udal land included the foreshore, unlike elsewhere in Scotland, where the foreshore was Crown Estate. A decision of the Court of Session, Scotland's Supreme Court, in 1903 upheld a landowner's claim to the foreshore adjoining his 'udal' land in Lerwick, which occasioned Drever's article of 1904. Succession to property (land and movables) under 'udal' law was by partible inheritance. A brother's part was equal to two sisters' parts. Drever states erroneously that the 'youngest son' received the father's dwelling house. However, partible division had become largely superseded by the feudal principle

⁵ Jones 1996b: 6

of primogeniture. The period of prescription whereby non-udal land became ‘udal’ was according to Drever 30 years, but this had been superseded by the Scots law of prescription in the eighteenth century. Udal landowners paid an annual tax of Norse origin known as ‘scat’ (ON ‘skattr’ = ‘tax’), although over time this tended to be conflated with feu-duties despite not being a feudal duty in origin. In Shetland, the commonly owned pastures were called ‘scattalds’, which Drever thought was the unit on which ‘scat’ was payable. Weights and measures of Norse origin, with weighing beams or steelyards known as ‘bismars’ and ‘pundlars’, had been used to measure the quantities of kind in payment of scat until replaced by imperial avoirdupois weights in 1826. The ‘pings’ – the ‘Udallers’ Law Court and Parliament’ – with their law books had disappeared. The revised version of Drever’s entry in the second edition of *Green’s Encyclopædia* included an additional paragraph on a decision of the Court of Session in 1907 which found that salmon-fishing in Orkney and Shetland did not belong to the Crown but to the riparian owner on the basis of udal law.⁶

In 1936, Edinburgh solicitor Wm. Jardine Dobie wrote the chapter on ‘Udal law’ in the Stair Society’s *Introductory Survey of the Sources and Literature of Scots Law*. He notes that ‘odal’ (derived from Old Norse ‘oðal’) is etymologically more correct, but ‘udal’ has the sanction of custom and of Scottish jurists. Dobie notes many of the same features as Drever. Like Drever, he observes that a ‘udal’ holding was allodial and the ‘udaller’ did not owe service to a superior. He paid ‘skatt’, which in origin was a tribute to the Crown or state rather than a feu-duty. A written title was not essential. ‘Udal’ inheritance was divided among the children, with daughters’ shares being one-half of those of sons, and the latter were entitled to acquire their sisters’ portions by purchase if they wished. The eldest son (not the youngest son, as stated by Drever) was entitled to the mansion or manor-house and had first choice over a lot that was available. Dobie refers to the chief court, or lawthing, presided over by the lawman, until replaced by Scottish sheriffs. He refers also, without detail, to local weights and measures. Dobie mentions a number of additional features of ‘udal’ law, not referred to by Drever. A udaller who wished to sell his land had first to offer it to his kinsmen, and the kin had the right to redeem land sold out of the family without consent. Dobie refers also to the ‘curious practice of ‘upgestry’, whereby an estate could be made over to another in return for life upkeep.⁷ However, Dobie finds that

⁶ Drever 1900; 1904; 1933 [1914]: 330–31; Jones 2012b: 110–11

⁷ Dobie 1936; Jones 2012b: 111

For the most part the older system of law has disappeared from the islands, but udal tenure had remained to take its place in the law of Scotland, and, with its scanty survivance, in the midst of the prevailing feudalism, we have its incidents in fore-shore and fishing rights.⁸

Texts referring to ‘udal’ and related concepts

The study is based on an examination of three types of texts in which the term ‘udal’ and associated terms are found. The first are legal texts, including laws, legal commentaries, parliamentary papers, charters and title deeds, lawsuits, and polemical tracts on legal issues. The second type is topographical and historical literature, including travellers’ accounts, local people’s descriptions, antiquarian accounts, local histories, geographical surveys, guidebooks, and encyclopaedia entries. The third type of text is fiction, including sagas, novels, short stories, and poetry. The texts are systematically analysed in order to find out how law and customary law are referred to, particularly in relation to land and land rights. The focus is on the manner and context in which ‘udal’ and closely related concepts are found. For pragmatic reasons of space, only a selection of the analysed documents can be directly referred to in the following.

For the purposes of this chapter, the analysis is divided into six periods or time contexts. The first is from the 1160s to 1468–69, covering the period from the time of the first written Norse laws (specifically the *Gulating Law*) to the transfer of the islands to Scottish sovereignty. The second period is from 1468–69 to the abrogation of ‘foreign laws’ (i.e. Norse law) by the Scottish Privy Council in 1611. The third period is from 1611 until the union of the Scottish and English Parliaments to become the British Parliament in 1707. The fourth is the period from 1707 to c.1820, the latter date roughly marking the end of Scottish Enlightenment. The fifth is the period from c.1820 to c.1890, during which the fascination of Victorian writers for the Vikings reached a culmination. The final period is from c.1890 to the present.

The different types of text are present to different degrees in each of the time periods. Legal texts dominate in the first two periods. In the third period, these are joined by early topographical–historical descriptions in the mid seventeenth century and travellers’ accounts from the end of the century. Legal treatises and polemical tracts play an increasing role in the eighteenth century, during the fourth period, along with increasing numbers of topographical–historical descriptions

⁸ Dobie 1936: 455

and travellers' accounts. During the nineteenth century, covering the fifth period, new types of publication became important, such as newspapers, collections of historical documents, novels, translations of the sagas into English, and from the end of the century, scholarly articles. The amount of all types of text increases in the final period, in particular legal commentaries, scholarly articles and comprehensive historical works, novels and poetry, and from the turn of the millennium, web sites.

1160s to 1468–69

The term 'udal' comes from Old Norse 'oðal' and is derived from the medieval Norse laws that applied to Orkney and Shetland. The Norwegian legal historian Knut Robberstad argued in 1983 that 'udal' law in Orkney and Shetland can be traced back to the *Magnus Code* of 1274.⁹ This codified the earlier provincial laws, including the Gulathing Law of West Norway, which appears to have been written down from the 1160s onwards¹⁰ and is thought to have applied in Orkney and Shetland. The term also occurs in the Icelandic sagas, the manuscripts of which date from the twelfth and thirteenth centuries. In simple terms, 'oðal' referred to ownership of inherited family property, principally land, with certain rights belonging to the kin.¹¹

Other provisions in the medieval Norwegian laws are related to the extension of landowners' rights of use beyond the shore. Landowners owned the water and fishing rights in lakes and watercourses adjoining their land, and this has later been interpreted as including coastal waters offshore. The *Magnus Code* contained detailed rules for the division of the catch between hunters and landowners in the case of seals caught at the shore, and similarly for large whales driven onto the shore. Stranded whales were to be divided equally between the landowner and the king after the finder had received a share of the blubber, while whales driven onshore were generally to be divided equally between the hunter and the owner. The *Magnus Code* also introduced a provision concerning buried goods (treasure trove) on land, which were to be divided giving one-third to the finder, one-third to the landowner, and one-third to the Crown.¹²

⁹ Robberstad 1983

¹⁰ Helle 2001

¹¹ Robberstad 1955; 1967

¹² Taranger 1915: 107–8, 143–44, 158–61; Larsen 1935: 96–7, 102–4, 126–27, 396–97; Robberstad 1981 [1987]: 111–113, 119–21, 165–67; 1983: 61–65; Ryder 1989: 212–13, 218–19; Hagland and Sandnes 1994: 191, 207; Szabo 2008: 246–54

The earliest detailed literary presentation of Orkney and Shetland is found in the Icelandic sagas, principally *The Orkneyinga Saga*. Compiled by Icelandic skalds in the twelfth and thirteenth centuries, the sagas are as much fiction as historical documentation. *The Orkneyinga Saga* tells the history of the Norse earls of Orkney from the capture of the islands by the Norwegian King Harald Fairhair (Harald Hårfagri) in the ninth century to the forfeiture of Shetland with its ‘scat and dues’ to the Norwegian King Sverre at the end of the twelfth century. It mentions the ‘things’ (ON ‘þing’), the legal assemblies called by the earls, but with a few exceptions does not discuss law. Earl Thorfinn Sigurdsson the Mighty (ruled c.1014–c.1065) and Earl Hákon Paulsson (ruled c.1103–c.1123) both turned to the government and made laws upon their return to Orkney from expeditions abroad. Earl Rognvald (ruled 1136–58), later canonized as St. Rognvald, secured financing for the building of the St Magnus Cathedral in Kirkwall by reviving a claim that the earls had inherited the ‘odal possessions’ of the landowners and proposing a law that they could be redeemed by the heirs when they succeeded to the land. At a meeting of the ‘thing’, an agreement was reached whereby the owners repurchased their ‘odal possessions’. Rognvald’s claim was apparently derived from a fine of 60 gold marks exacted on the islands by Harald Fairhair, which was paid off by Earl Torf-Einar on condition that the ‘odal’ (or ‘udal’) rights of the landowners were made over to him.¹³ To what extent the content of these manuscripts would have been known in Orkney and Shetland at this time is difficult to ascertain.

1468–69 to 1611

Scandinavian rule ended in Orkney in 1468 and Shetland in 1469 when the king of Denmark and Norway, Christian I, mortgaged the islands to the Scottish king, James III, in lieu of a dowry on James III’s marriage to Christian’s daughter, Margrete (Margaret). The treaties of 1468 and 1469 provided implicitly for the continuation in Orkney and Shetland of existing laws, and the Scottish Parliament in 1567 specifically recognized that the islands were subject to their own laws, although the Scottish Parliament also passed Acts relating to the islands.¹⁴

Comprehensive collections of documents for the period up to 1611 have been published for Orkney and Shetland. J. Storer Clouston’s *Records of the Earldom of Orkney 1299–1614* contains 240 documents in all, and John Ballantyne and Brian

¹³ Anderson 1981 [1873]: 1–2, 6, 11, 43, 68–69, 73, 110, 112, 134, 158, 199; Thomson 2001: 34–35, 87, 89, 102, 108

¹⁴ Ballantyne and Smith 1999: 17–19, 126

Smith's two volumes of *Shetland Documents 1195–1579* and *1580–1611* have a total of 821 documents. They provide extensive evidence of land transactions and legal disputes. Ballantyne and Smith list the various spellings of 'udal' as 'odal, owthal, owdaill, owthell, owthald, outhall, owthay, owdell, owthewell, uthall, uthaill, oudall, outhale, vuthal/outhell, owthell, uthal(l), uthel(l), owthail'. They refer to 'udal' rights, 'udal' land, 'udal' possession, and 'udal' men. These terms are found in 46 documents in Shetland, while the count for Orkney is 5. Other terms refer to the rights of kin and to partible inheritance, which are intimately bound up with 'udal' possession.¹⁵

The rights of kin are demonstrated through many land sales made with the consent of kin, as well as redemption of land already sold. Mention of the rights of kin, consent of kin to land conveyance, or land redemption by kin occurs in 52 documents in Shetland and 12 in Orkney. Deeds of the late fifteenth and sixteenth centuries often refer to 'roith', the right of redemption, being sold with the land and sometimes separately. The term 'roith' was spelt in a variety of ways. Some deeds refer to 'royth, eyng, owthal, and samyng' (in various spellings), which can be translated as 'right of redemption, possession, allodial right, and rights in joint possession', corrupted from Old Norse *rǫð, eiga, oðal*, and *sameiga* (in Modern Norwegian: *råd, eie, odel*, and *sameie*)¹⁶. This appears to be a ritualized legal language, occurring in 31 instances in Shetland documents and 3 in Orkney documents. To get round the strict restrictions on the sale of land outside the kin, phrases evoking the seller's 'urgent necessity' were included in many deeds.

There are several examples of partible inheritance of 'udal' holdings: 20 in Shetland and 12 in Orkney. Often, this took place at 'schounds', which were meetings to divide inheritance among heirs. The term 'schound' (in a variety of spellings) is derived from Old Norse *sjau*, meaning 'the seventh day' and referring to a festal gathering held on the seventh day after a death, at which the deceased's debts and other affairs were settled. In some divisions of property, it was specified that the eldest brother was to receive the main house. Indirectly, partible inheritance is indicated by frequent references in land transactions to 'sister parts' and 'brother parts', the former generally worth half the latter. The practice of 'uppgestry' is also recorded, whereby land was handed over to a younger relative in return for lifelong support.

Another phrase that appeared frequently in late fifteenth-century and sixteenth-century land deeds stated (with small variations) that ownership extended from

¹⁵ Clouston 1914; Ballantyne and Smith 1994; 1999

¹⁶ Falk and Torp 1903–06: 133, 565, 623, 682

the ‘highest stone in the hill to the lowest in the ebb’, in other words including the foreshore. There are 20 instances in Shetland and 14 instances in Orkney. The first is from Orkney in a deed of conveyance dated January 1480 [1481],¹⁷ in which a younger brother sells his share of a land inheritance to his elder brother ‘fra the heast stane in the hill to the lawest in the eb’.¹⁸ The first occurrence in Shetland is in 1525 in land sale extending ‘fra the heast of the hyl to the lawast in the eb’, followed in 1528 in a sale of land ‘fra the hyast part of the hill to the lauest stein of the ebb’, where the seller had first offered it to his younger brother who was unable to raise payment.¹⁹ Although landownership under Norse law extended to adjoining offshore waters, and fishing and hunting places, Robberstad argued that the clause probably arose in Orkney as the term ‘ebb’ is not a Norse but an English word. Further, the land concerned in the 1480 document belonged to a family of Orkney lawmen (judges and legal advisers), who may have intended to specify that landowners owned the adjoining beach in Orkney in contrast to Scotland, where it belonged to the Crown.²⁰ Equivalent terms are found in contemporary documents in Norwegian. A letter of 1485 from the lawman and councillors of Bergen, together with the lawman of Shetland, reversing a sale of land in Shetland, included the clause ‘till lands och Fiarsls’ (‘to land and to foreshore’).²¹ Also from Bergen is a land conveyance dated 1537 selling a farm in Shetland with a similar clause, ‘till fiels ok till fyere’ (‘to fell and foreshore’).²²

Deeds also mentioned the obligation to pay scat, payable by both ‘udallers’ and tenants. The tax payments were recorded in Orkney rentals of 1492, 1500, and 1595 and in an early sixteenth-century scat list for Shetland. In the mid-1570s, the misuse of Norse weights and measures for collecting scat, which was paid in kind, was among the complaints made against the fief-holder of the islands, Earl Robert Stewart, and his representatives.²³

While the documents show the continuation of Norse land tenure practices and rules of inheritance in this period, others in the collections show the gradual encroachment of Scottish practices of land disposing. Feudal charters became

17 Until 1600, New Year’s Day in Scotland was 25 March (Ballantyne and Smith 1999: xxi), hence the date 1480 would be 1481 in the revised calendar

18 Clouston 1914: 192

19 Ballantyne and Smith 1999: 34, 36

20 Robberstad 1983: 65–66

21 Mackenzie 1836 [1750]: Appendix, ii; Ballantyne and Smith 1999: 20

22 Ballantyne and Smith 1999: 39–40

23 Peterkin 1820; Clouston 1914; Shaw 1980: 6; Ballantyne and Smith 1994; 1999; Thomson 1996; 2001: 208

increasingly common after the first one in 1535, as did primogeniture in accordance with the laws of Scotland, 'notwithstanding the custom of the country' (i.e. the local customary laws of Orkney and Shetland), as stated in a number of documents. On the other hand, scat payments and ownership from the highest in the hill to the lowest in the ebb became incorporated into feudal charters.²⁴

The existence of 'udal' law was not referred to in the *Jus Feudale*, the earliest edition of which was published in 1603 by Thomas Craig, the first of the great institutional writers on Scots law, although he did refer to 'allodial property'.²⁵ However, in a manuscript of 1605, Craig noted the continued existence of 'Norwegian law' in Orkney. In 1604, he had been appointed as one of the Scottish commissioners to discuss closer political union with England after the Union of the Crowns the previous year, and his manuscript provided the only detailed argument for union from the Scottish side. In a discussion as to whether the laws of the two countries should be identical for the perfecting of the proposed union, the case of Orkney was given as an example of a union where this was not the case.²⁶

Nonetheless, the legal system in Orkney and Shetland had in this period become infiltrated with Scottish legal practices and terminology introduced by clergy and notaries from the mainland. The lawman in Orkney was replaced by a sheriff in 1541, while the lawman in Shetland was last mentioned in 1549. The lawthings became sheriff courts, although the term 'lawthing' was used intermittently until the early seventeenth century. The law books of Orkney and Shetland disappeared, although the latter was referred to in 1602. Nonetheless, the earliest extant 'court book' in the islands, that of Shetland for 1602–04, shows the survival of Norse law and practice, although with a mixture of Scottish and Norse terminology. Transactions involving land owned in Shetland by Norwegian landowners (known as the 'Lords of Norway') were occasionally dealt with in Bergen until the early years of the seventeenth century. The use of Scottish legal practice alongside Norse law in the islands caused considerable confusion. The notorious Earls Robert and Patrick Stewart, who ruled the islands as fiefs from 1565 to 1609, exploited this confusion to suit their own ends. The coexistence of two legal systems was formally brought to an end in 1611 by the Act of the Scottish Privy Council that proscribed 'foreign laws' in Orkney and Shetland. Besides the legal iniquities of the Stewart earls, this Act was prompted by James VI's aim of uniform laws throughout his realm. A

24 Shaw 1980: 34–38; Clouston 1914; Donaldson 1984: 28–29; Ballantyne and Smith 1994; 1999

25 Craig 1934 [1655]: 130–31 (English translation of the 1655 edition of the work, which was published in several editions)

26 Craig 1909 [1604]: v–vi, 299–300

contributory factor may have been the replacement in 1604 of the *Magnus Code* in Norway by *Christian IV's Norwegian Code*.²⁷

1611–1707

The extant court books for Orkney from 1612 onwards and Shetland from 1615 onwards reflect the replacement by the 1611 Act of Norse by Scottish law. Nonetheless, by-laws for Orkney from 1612 and Shetland from 1615 (and later), known as the Country Acts, re-enacted earlier local legal customs for day-to-day agricultural management.²⁸

Feudal conveyancing and land titles became the norm in the seventeenth century. The Register of Sasines, in which all land transactions in Scotland had to be recorded, was established in 1617. The register showed that some land continued to be called ‘udal’ land. The abolition of Norse law did not abolish ‘udal’ tenure. Some owners continued to practise partible inheritance, rights of kin, and land transactions within the family without written titles. However, there were instances of ‘udal’ land being inherited by primogeniture and ‘udal’ land held by feudal charter. The owners of large estates acquired ‘udal’ land and called themselves ‘udallers’, but followed Scottish inheritance practices. While rights of kin under Norse law kept land within the family and to some degree counteracted land fragmentation, there was after 1611 no legal restriction on land fragmentation. There were court cases over what constituted a legal ‘udal’ title. The Court of Session in Edinburgh decided in 1624 that ‘udal’ lands had to have a lawful title and that possession alone was not sufficient, although a case in 1636–37 accepted a ‘shynd bill’ (a record of inheritance on the death of a udal landholder, derived from ‘schound’) as indicating a valid title. The granting of feudal charters to udal landholders proceeded apace, especially in the 1660s. However, a case in 1669 cast doubt on the idea that a feu charter on ‘udal’ land necessarily led to feudalization. In 1690, an Act of Parliament allowed certain small landholders to hold their land by ‘udal right’ without a title deed.²⁹

In 1681, James Dalrymple, later Viscount of Stair, had published his *Institutions of the Law of Scotland*, in which two short paragraphs explained ‘udal rights’,

27 Donaldson 1954; 1958: 71–72; 1978: 185–92; 1984: 28–34; Anderson 1982; 1992; Robberstad 1983: 53–54, 57–59; Ryder 1989: 195–98, 205; Ballantyne and Smith 1994: xvi, 261–62, 306; B. Smith 1999; Thomson 2001: 244–45, 262–300

28 Barclay 1962; 1967; Donaldson 1991; Thomson 2001: 321

29 Shaw 1980: 39–42; Donaldson 1984: 34–35; Ryder 1989: 202–03; Thomson 2001: 313; B. Smith 2003c

described as ‘peculiar customs of the isles of Orkney and Zetland’.³⁰ The ‘udal right of lands’ meant that land could be held by possession, if proven by witnesses, in contrast to the requirement of a written title in the rest of Scotland.³¹

The first topographical descriptions to mention ‘udal lands’ and ‘udal rights’ appeared in the seventeenth century. There was no mention in earlier descriptions of the Northern Isles in Latin from the sixteenth century, nor in the first in English, by Richard James in c.1615.³² In 1633, Robert Monteith wrote a description of Orkney and Shetland in which ‘udal lands’ were mentioned, although it was not published until 1711 by Robert Sibbald, the Geographer Royal of Scotland. Monteith was a moneylender and landowner, whose estates on Orkney had been confiscated and plundered by Earl Patrick Stewart.³³ They were later restored to him, but this experience may explain why he had an interest in the Norse land-holding system. He gave a presentation of the civil government of the islands under Norwegian rule. He described the Norse laws as ‘St Olla’s Laws and Customs, some of which yet are retained’, referring to St Olav, King Olav II of Norway, who ruled during 1015–28 and to whom the ancient laws of Norway were often accredited. Monteith referred to ‘udalers’, the ‘lawting’ on Ting Holm ‘where they sat in the open fields’, ‘udal lands’ held without charter or sasine, and a ‘shund bill’, by which the ‘youngest’ was to receive the dwelling house and the remainder of the inheritance was to be divided equally among the children of the deceased.³⁴ Monteith appears to have been the source of the mistaken notion that the youngest son received the dwelling house, repeated by several later writers. Monteith’s account is the first extant description of the islands by an inhabitant, and was copied in later descriptions.

The Reverend James Wallace, who was the last minister of St Magnus Cathedral in Orkney before the abolition of the episcopacy, wrote at the Geographer Royal’s request a description of Orkney, which was published in 1693, 5 years after his death. He explained some ‘Norish’ terms, including ‘udall-lands, such as are possessed by the udall-right, a possession the natives have successively, without either charter or seasin’, and ‘udallers’ who are ‘heritors that hold their land by the

30 Stair 1826–27 [1681], vol. IV: 683

31 Stair 1826–27 [1681], vol. II: 222

32 Hector Boece’s description in *Scottorum Historia* of 1527 (Batho and Husbands 1941), paraphrased by Paulus Jovius in *Descriptio Britanniae, Scotiae, Hyberniae, et Orchadum* of 1548 (Flinn 1989: 42–43); Joannem Ben’s *Descriptio Insularum Orchadiarum* of 1529 (Mitchell and Clark 1908: 302–24); Richard James’ *Descriptions of Shetland, Orkney and the Highlands of Scotland*, c.1615 (MacGillivray 1953)

33 Hewison 1998: 109–10

34 Monteith 1711 [1633]: 4, 9, 13–14, 41–42

foresaid udall right'.³⁵ The term 'udal right' became firmly established in accounts by contemporary travellers to the islands, such as Martin in c.1693 and John Brand in 1701. Both stated that the udal right was given by the Norwegian king 'Ulas' or 'Ulaus' [Olav] and defined it in the same way as Wallace. Martin referred to the 'law ting', the 'ancient court of justice' on the island of Holm at Tingwall, where the judge, clerk, and other officers of the court sat on four great stones and dealt with lawsuits according to the 'practice of the Danes'. Brand referred to 'a kind of custom or tribute called scat' of Norwegian origin, paid as a tribute to the Crown or his steward.³⁶

1707–c.1820

The union of the Scottish and English parliaments had little immediate impact on the Northern Isles. Although legislative authority was now transferred to Westminster, Scotland continued to have its own laws and judicial system, to which Orkney and Shetland were subject. Nonetheless, the distinctiveness of legal customs relating to 'udal' tenure and the continued payment of scat and use of Norse weights and measures aroused increasing attention during the eighteenth century. This led to a lawsuit between 1833 and 1859, lasting longer and collecting a greater volume of evidence than any other case heard by the Court of Session in Edinburgh.

A much fuller account than earlier of land tenure and law in the Norse period and later is found in Thomas Gifford's *Historical Description of the Shetland Islands in 1733*, published in 1786, 30 years after his death. Gifford was a pioneer of the new Shetland fishery, an exploitative system whereby merchant-lairds purchased land and split up the holdings to increase the number of tenants for fishing. He was the Earl's chamberlain and had the task of collecting duties and scats. As steward of the islands, he had responsibility for all aspects of local government, and he also accumulated land on his own account. He made a thorough historical reconstruction of scats and ways of transmitting property through 'udal succession'. He was perhaps the first to describe the 'poor udellers', who had in medieval times been oppressed by the Norwegian governor. He also criticized the oppressions of the Stewart Earls, and the resultant replacement of the Norse system of transmitting land by Scottish conveyancing, which he stated made lawyers rich and impoverished the 'udallers', to the detriment of his tax income.

³⁵ Wallace 1693: 111

³⁶ Brand 1883 [1701]: 41, 98; Martin 1999 [1703]: 214–15, 225–26

Gifford's description was written the same year as the lawsuit known as the Pundlar Process began. In this 26-year-long legal dispute, a group of Orkney lairds, referred to as 'Orkney udallers and heritors', accused the Earl of Morton, holder of the Orkney earldom estates, of manipulating Norse weights and measures in order to increase scats and dues payable to the earl. The case was named after the Old Norse weighing beam, the 'pundlar'. In 1759, the Court of Session went in favour of the Earl.³⁷ Scat was often mentioned alongside other feu duties in charters, although the Court of Session found in 1777 and 1779 that it did not carry with it a feudal burden.³⁸

The Pundlar Process led to several legal tracts being published, which did much to arouse awareness of continuing Norse legal practices. In 1750, James Mackenzie, a Kirkwall lawyer, published anonymously *The General Grievances and Oppression of the Isles of Orkney and Shetland*, presenting the grievances of the lairds against the earl. He provided a history of scat, which he argued should have been abolished when Scottish land tax was introduced. The bulk of his publication consisted of a presentation of evidence for the alleged increase in weights and measures.³⁹ Mackenzie's polemic drew the attention of lawyers and other writers to 'udal' practices. Among them was Andrew McDouall, later Lord Bankton, who included an account of the 'Udal Right in Orkney and Zetland' in 1751 in his work *An Institute of the Laws of Scotland*. He maintained that the 'udal' right was antiquated and argued against its continued existence. He held that the consent of kin and partible inheritance had largely gone out of use, and that most land in Orkney and Shetland had become 'disudaled'.⁴⁰ Further support for Morton came in a pamphlet published in 1760 and attributed to Thomas Hepburn, an Orkney minister. He argued that the Pundlar Process was pursued by only 16 Orkney heritors, who themselves hindered agricultural improvement through short leases and rents paid in kind.⁴¹

This was followed by a series of writings by late eighteenth- and early nineteenth-century travellers on the history and natural history of the islands, which were concerned especially with means of improving agriculture, fisheries, and the conditions of the inhabitants. Not all referred to 'udal' rights, but those that did referred in varying detail to scat, Norwegian weights and measures, 'udal' tenure, and, in some cases, the division of whales. Writers quoted previous writers,

37 Fereday 1981; 1990: 9–21; Ryder 1989: 202, 207–08, 210–12

38 Drever 1933 [1914]: 332–33

39 Mackenzie 1836 [1750]

40 McDouall 1751: 542–45

41 Hepburn 1885 [1760]

thus building up a picture of the islands in which the heritage of Norse law became an established part. This guided the expectations of the increasing number of travellers to the islands in the nineteenth century regarding what they would find there.⁴²

A fuller presentation of ‘udal’ lands and legal practices, especially the continued existence of Norse weights and measures, was included in 1805 in *The History of the Orkney Islands* by George Barry, an Orkney minister.⁴³ A particularly comprehensive account is Arthur Edmonston’s *A View of the Ancient and Present State of the Zetland Islands* from 1809. Edmonston was a member of an old Shetland landowning family. His account provides extensive descriptions of ‘udal’ tenure, scat, weights and measures, and the division of whales. It also makes a single mention of the term ‘odal law’. Edmonston referred to previously published sources, as well as to the Pundlar Process and other disputes.⁴⁴

Edmonston wrote at some length on landowners’ claims to a share of pilot whales driven ashore or beached; this was a point of contention in the eighteenth century that later became associated with ‘udal’ tenure. Edmonston did not relate it specifically to ‘udal’ rights, but noted that the landowners stated their claim as proprietors of the shores to be in accordance with the ‘use and want’ of the country. He referred to an agreement between the Earl of Morton and 20 landowners in 1739 whereby the proceeds of the whales below a certain amount were to be divided equally between the captors, the landlords, and the earl in his capacity as admiral of the islands on behalf of the Crown. Edmonston disputed the legality of the earl’s claim after the abolition of heritable jurisdictions in 1747, and he was doubtful of the reasonableness of the landowners’ claim. He gave examples of captors resisting the surrender of a share of whales captured in Shetland in 1784 and 1803.⁴⁵ Gifford in 1733 had referred to the tripartite division of whales as ‘country practice’.⁴⁶ How far landowners’ claims to a share in whales were derived from medieval Norse law and how far it was a custom introduced by the admiral in the eighteenth century is a matter of discussion. The medieval laws of mainland Norway, the Faroes, and Iceland had detailed rules for the ownership and division of whales, and there is uncertain evidence of customs for dividing whales in early seventeenth-century Shetland. By the eighteenth century, whales had gained

42 For example, Sinclair 1795: 221–56; Kemp 1801; Highland Society of Scotland 1802; Neill 1806; Hall 1807; Shirreff 1814a; 1814b; Hibbert 1891 [1822]; Low 1879 [1774]

43 Barry 1975 [1805]: 211–21

44 Edmonston I 1809: 78–79, 102–03, 109–11, 128–35, 147–49, 160, 169–70, 346–47, 355–59, 364

45 Edmonston II 1809: 153–74

46 Gifford 1976 [1786]: 51–52

commercial interest for their oil. In 1713, the Earl of Morton made a contract with local lairds that the captors of whales should receive one-fifth, the landlords one-fifth, and the admirals three-fifths. By the 1720s, this had changed to one-third each, which was confirmed by the 1739 agreement. In the early nineteenth century, resistance by tenants to surrendering shares of captured whales became the subject of a lawsuit, known as the Uyea whale case. In February 1805, 190 whales had been driven ashore by tenants of Uyea and Unst in Shetland, a further 120 a few months later, and 50 more the following year. The landowner claimed a third for himself and a third for the Crown. The case reached the Court of Session, which in 1808 ruled against the salvors. In agreements made between the landowner and tenants afterwards, the tenants were allowed to keep a half share, while the other half was to fall to the landowner; the Crown's share was conveniently forgotten.⁴⁷

For the early history of the islands, both Barry and Edmonston refer to the Icelandic historian Thormodus Torfæus (Þormóður Torfason), historiographer to the king of Denmark. He provided a history of the Earls of Orkney from 930 to 1263, based on the Icelandic sagas. Torfæus' book, *Orcades*, was first published in Latin in Copenhagen in 1697. It was translated into English by a Caithness minister, Alexander Pope, who visited Orkney in 1758. Pope's translation was prepared for publication in 1780, but publication was delayed after his death in 1782 and it did not appear until 1866.⁴⁸ The first printed edition of *Orkney-inga Saga* was a Latin translation by Jonas Jonæus (Jónas Jónsson) published in Copenhagen in 1780,⁴⁹ but it is difficult to ascertain whether this was available in the Northern Isles. Barry appears to have had access to manuscripts on the topography and history of the islands left by George Low, another Orkney minister, who lived there from 1774 until his death in 1795. Low was familiar with Torfæus. He also referred to Wallace, and reproduced an extract from Gifford's work on scat and 'udal' succession. However, Low's manuscripts were not published until 1879 or later, his *History of Orkney* first appearing in print in 2001. Barry's work remained the standard work on the history of Orkney for more than a century.⁵⁰ Similarly, Edmonston's book, in which Barry is cited, became the standard work on the history of Shetland.

47 Donaldson 1958: 56–57; Wills 1975; Fenton 1978: 545–47; Lindquist 1994: 68–69; B. Smith 2003a: 87–90; Szabo 2008: 246–54

48 Torfæus 1697; 1866 [1697]

49 Jonæus 1780

50 Low 1879 [1774]; Cuthbert 2001; Seibert 2008 [2006]: 40, 43–54, 56, 66–67, 72–73; Hall 2010: 32–33

C.1820–c.1890

The growing interest in what has been termed ‘Old Northernism’ at the end of the eighteenth and beginning of the nineteenth centuries was associated with the Scottish Enlightenment. This intellectual movement combined social commentary, moral philosophy, and a drive for economic improvement with systematic scientific observation, topographical–geographical description, and a strong interest in history. Old Northernism featured a developing awareness of Britain’s Scandinavian heritage, not least the Norse contribution to Scottish history. It culminated during the Victorian era in the nineteenth century with the ‘invention’ of the notions of the ‘Vikings’ and the ‘Viking Age’. Regarding Orkney and Shetland, literature referring to udal tenure and survivals of Norse legal practices developed from the 1820s along two interlinked paths, one characterized by romanticism and the other by political agitation.⁵¹ This literature included the first novel set in the Northern Isles, published collections of historical documents, political tracts, newspaper articles, encyclopaedia entries, translations of the sagas, historical accounts by local writers as well as travellers, and, in the last quarter of the century, articles in scholarly journals.

Alexander Peterkin, Sheriff Substitute for Orkney and Shetland from 1814 to 1823, published in 1820 the rentals of the ancient Earldom and Bishopric of Orkney and related documents from the end of the fifteenth century to the mid-eighteenth century, the first time such documents had been published. In his *Notes on Orkney and Zetland* of 1822, he referred to the ‘peculiar laws and institutions of Orkney and Zetland’, based on the old ‘laws and usages of Norway’. He expounded a romantic view of the ‘free udalmen’ and ‘independent udallers’, arguing that there was a fundamental distinction between ‘udal and feudal’ landholdings, and berating those freeholders who had taken feudal charters for expediency, ‘their political privileges thereby acquired’. He argued that the 1611 Act of the Privy Council had not been sanctioned by Parliament, which had earlier guaranteed the ‘ancient laws, usages and rights of Orkney and Zetland’, and should be considered void. He maintained that the ‘udal rights of the landholders’ continued unimpaired. The Reverend Walter Traill, representing the local establishment of ministers and lairds, answered Peterkin’s criticism of the ‘tyrannical Orkney lairds’ in his *Vindication of Orkney* in 1823.⁵²

⁵¹ Wawn 2000; Broadie 2001; Seibert 2008 [2006]

⁵² Peterkin 1820; 1822; W. Traill 1823; Seibert 2008 [2006]: 86–89

Peterkin was inspired partly by Sir Walter Scott's novel *The Pirate* from 1822. Scott initiated the use of Norse themes in Scottish fiction after visiting Orkney and Shetland in 1814 with the lighthouse-builder Robert Stevenson and the Commissioners of the Northern Lights. Scott had already developed a strong interest in Norse history and literature in the 1790s, and as 'one of the great sources of the European romantic movement'⁵³ bridged the Scottish Enlightenment and the romanticism. He met the sheriff substitute as well as proprietors of land in Orkney and Shetland, and curious about the landholding system learnt about udal proprietors and 'the old Norwegian udallers', who had largely been replaced by Scottish gentry. He used Barry and Edmonston as sources. In his novel, he presented a romantic view of a 'udaller' as a small landowner descended from an old Norse family.⁵⁴

Also in 1822 appeared Samuel Hibbert's *Description of the Shetland Islands*. Hibbert visited Shetland in 1817 and again in 1818 to undertake a geological survey, and became interested in the antiquities of the islands. He wrote about the history of udallers and of udal succession. He praised 'the free tenure of udal lands' and deplored the historical forfeiture of udal property to the earls. In referring to partible inheritance, Hibbert uses the expression 'laws of udal succession', which he once calls 'udal laws'.⁵⁵ In 1823, he lectured to the Society of Antiquaries of Scotland on the ancient 'tings' of Orkney and Shetland (in a memoir first published in 1831), fancifully claiming to identify the archaeological remains of a number of 'ting' sites on little real evidence.⁵⁶

At this time, there appeared the first lengthy encyclopaedia articles on the island, published in *The Edinburgh Encyclopædia* in 1830. An Orcadian, Thomas Stewart Traill (who in 1847 went on to become editor of the eighth edition of *Encyclopædia Britannica*, published in 1860), wrote the entry on Orkney, using available printed sources, among them the works of Torfæus, Wallace, Barry, Edmonston, Peterkin, and Hibbert. The historical section mentions 'udal' tenure and the pressures on landowners to take feudal charters. The entry on Shetland, the author of which is unacknowledged, referred to 'udallers', 'udal' rights, and the 'law of inheritance' which 'was in Shetland the same as in Norway'. In the sixteenth century, 'the Scottish settlers ... endeavoured to set aside the old laws of 'udal' succession, and

⁵³ Broadie 2001: 221

⁵⁴ Scott 1904 [1822]; 1982; D'Arcy 1996: 20, 23; Wawn 2000: 65–88; Seibert 2008 [2006]: 74–85; Hall 2010: 34–44

⁵⁵ Hibbert 1891 [1822]: 34–68, 98–106, 118–39, 145–46

⁵⁶ Hibbert 1831; B. Smith 2009

to introduce newer ones more favourable to primogeniture'. Also mentioned are 'scat', 'scattalds', and 'tings'.⁵⁷

Later in the 1830s, Orkneyman Samuel Laing studied the small Norwegian 'udal' landowners during a stay in central Norway from 1834 to 1836. His published *Journal* was presented as an enquiry into the moral and political economy of Norway. He idealized the Norwegian 'udallers', the independent small proprietors with their 'udal estates', and was impressed by the 'udal law of succession' without primogeniture, which he saw as an example for other countries to follow. He regarded an alteration in the law of succession to property as a solution to the Irish problem.⁵⁸ Inspired by Laing, the Irish nationalist writer Thomas Davis coined the term 'udalism' in binary opposition to 'feudalism' in his political tract of 1842, in which he contrasted Norway to Ireland and advocated peasant proprietorship with udal tenure as a solution to Irish poverty.⁵⁹

Laing eulogized the Norwegian farmers:

If there be a happy class of people in Europe, it is the Norwegian bonder. He is the owner of his little estate: He has no feu duty or feudal service to pay to any superior. He is the king of his own land, and landlord as well as king.⁶⁰

He continues: 'His scat or land-tax is heavy', but it was apparently used well. Laing uses the term 'udal law' several times in the *Journal*. He was interested in the contemporary Norwegian system of government and law. The survival of udal landholding formed the basis of his theory as to why the Norwegian way of living was superior. He was also enthusiastic about the medieval Norse laws 'established at the general Things or courts of the people'.⁶¹

Before 1834, Laing was a merchant, and from 1818 an estate-owner and agricultural improver. He was provost of Kirkwall from 1822 to 1834. During this time, he came into opposition with Peterkin, whom he thought was too critical of the Orkney lairds, and was instrumental in Peterkin's dismissal as sheriff substitute in 1823. Laing left for Norway when his estate went bankrupt in 1834. This marked a turning point in Laing's career. From then on, he lived primarily from his income as an author, making his mark as travel writer, political theorist, and Norse scholar.⁶²

57 T.S. Traill 1999 [1830]: 11–12; Anon. 1999 [1830]: 86–89

58 Laing 1837 [1836]: 92, 231–32, 280–85

59 Davis 1842

60 Laing 1837 [1836]: 331

61 Laing 1837 [1836]: 92, 128–29, 203–40, 331–34, 365–70, 480–82

62 Porter 1998; Fereday 2000; 2003; Wawn 2000; 92–116; Baigent 2004; Seibert 2008 [2006]: 89–97; Jones 2013

He published in 1844 the first complete translation into English from the Old Norse of *The Heimskringla*, or *Chronicle of the Kings of Norway*. It included a ‘Preliminary Dissertation’ presenting a highly idealized view of Old Norse society.⁶³

Laing’s translation made a major contribution to the romantic interest in the Vikings among intellectuals in Victorian Britain. In 1861, Sir George Webbe Dasent, former secretary to the British envoy in Stockholm, published *The Story of Burnt Njal*, his translation of *Njál’s Saga*. In 1873, *The Orkneyinga Saga* was translated by Edinburgh-based scholars, Icelanders Jón A. Hjaltalín and Shetlander Gilbert Goudie, with a long explanatory introduction by the editor, Joseph Anderson. These sagas refer to landowners’ ‘udal rights’, ‘scat’, and the ‘things’, thereby contributing to a notion that Norse society was governed by the rule of law and was inherently democratic.⁶⁴ During the 1870s, 1880s, and 1890s, Goudie authored a series of scholarly papers on the antiquities of Shetland, showing his strong interest in the ancient local governance of the islands, including Norse law and the ‘odal system’.⁶⁵

The expression ‘odal law’ was used several times by David Balfour, another Orkney landowner, in his introduction to a series of documents published in 1859 under the title *Oppressions of the Sixteenth Century in the Islands of Orkney and Shetland*, echoing Mackenzie’s title a century earlier. Balfour’s work was republished the following year under the title of *Odal Rights and Feudal Wrongs*, which repeated Davis’ dichotomy. Balfour associated ‘odal rights’ with the opposition of lairds to the historical impositions of the Scottish earls.⁶⁶

The main source of grievance among landowners was double taxation, since they were still paying both scat and other Scottish land taxes. In 1886, the Reform League for Orkney and Shetland, soon renamed the Udal League, was founded by London-based Orcadian Alfred W. Johnston to campaign for Home Rule. The League advocated land reform and the conversion of farm tenants to owner-occupiers. In 1889, by then named the Udal Rights Association, it organized a petition against double taxation, demanding an end to the payment of ‘scat’. The lairds, however, were more concerned in a memorial of 1893 with using ‘udal’ tenure to argue against the Crofters Act of 1886. The Udal Rights Association faded when in 1892 Johnston founded the Viking Club in London. It initially dallied with a romanticized Norse terminology – members were ‘udallers’, membership was their

⁶³ Laing 1844

⁶⁴ Dasent 1971 [1861]; Anderson 1981 [1873]

⁶⁵ Goudie 1904 [1871–1892]

⁶⁶ Balfour 1859; 1860

‘udal right’, the members’ meeting was the ‘thing’, their subscription was called ‘skatt’, etc. (although the term ‘udal law’ does not appear to have been used) – and this led to some ridicule in the London press. Nonetheless, the club turned to serious academic endeavour and became the forerunner of the still extant Viking Society for Northern Research.⁶⁷

C.1890–the present

The Victorian fascination with the Vikings was reflected in a Norse cultural revival at the end of the nineteenth century among middle-class intellectuals in Orkney and Shetland. Local historians during the first half of the twentieth century emphasized the Norse period in their works, frequently contrasting it with the perceived oppressions of Scottish rule.⁶⁸ In 1904, Goudie published *The Celtic and Scandinavian Antiquities of Shetland*, which contained more on the Norse period than on the pre-Norse period. This publication brought together in a single volume the series of scholarly articles published in the last three decades of the eighteenth century in the *Proceedings of the Society of Antiquaries of Scotland*. Several of these papers reproduced and discussed a number of historical documents from Shetland relating to the ‘udal’ system. A.W. Johnston edited and wrote copiously in two publication series, the *Saga-Book of the Viking Society* and *Old Norse Miscellany*. Between 1907 and 1913, Johnston published and edited together with his wife Amy Johnston several volumes of historical Orkney and Shetland documents, with the help of Jón Stefánsson for translations from the Old Norse. Clouston’s collection of Orkney documents up to 1614 was published in 1914. In the 1920s and 1930s, the Orkney Antiquarian Society focused on the Norse past. Clouston and Hugh Marwick were two of its leading members and published histories of Orkney that remained the standard works on the islands until the 1980s. Two-thirds of Clouston’s *History of Orkney* (1932) was devoted to the Norse period up to 1468, and only one-eighth to the period after 1611. More than half of Marwick’s *Orkney* was devoted to the Norse period, and only 4 pages of 100 dealt with ‘Orkney in the last three centuries’. While Marwick’s main interest was in the Old Norn language of the islands, Clouston’s book brought together ideas and conclusions that he had worked on and published during several decades of antiquarian

67 Johnston 1887; Association of Landowners of Orkney 1893; Thomson 1985; 2001: 391–92; Townsend 1992; Jones 1996a: 193; 1996b [2001]: 5–6; Seibert 2008 [2006]: 128–34

68 Renwanz 1980: 9–10, 89–91; Cohen 1983: 316–91; Øien 2005: 90–95; Seibert 2008 [2006]: 163–202

research, including much on ‘udallers’ and ‘udal rights’. It provided a patriotic, romanticized image of the Norse past.⁶⁹

After the publication of Drever’s article titled ‘Udal law’ in *Green’s Encyclopædia of the Law of Scotland* in 1900, the term ‘udal law’ became widely accepted as a term to describe the old Norse laws and later survivals in Orkney and Shetland, not only in the legal literature but also in historical studies, travel literature, tourist guidebooks, fiction, newspaper articles, and, after 2000, web sites.

In an article titled ‘Óðal law Orkney and Shetland’, Johnston criticized some of the historical statements in Drever’s article. The term ‘óðal law’ was also used in the introduction to *Orkney and Shetland Records*. Clouston similarly wrote on ‘odal law’ in the introduction to *Records of the Earldom of Orkney*. Dobie, prior to his entry on ‘udal law’ in the Stair Society’s survey of the sources of Scots law, wrote in 1931 an article in the *Juridical Review* titled ‘Udal and feudal: The conflict of laws in Orkney and Shetland’. In 1950, the First Viking Congress was held in Lerwick. Udal law was proposed as a theme by Shetland editor and local historian T.M.Y. Manson in a brochure of suggested topics the year before. In the spirit of Samuel Laing and Thomas Davis, he speculated on a Europe in which udalism had prevailed instead of feudalism: ‘Whatever other evils might have arisen, there would presumably have been no French or Russian revolutions, no ideological wars as we know them today’. The published proceedings of the conference in 1954 included a paper by John Stewart titled ‘Udal law and government in Shetland’, while William Croft Dickinson borrowed for his paper Balfour’s title of nearly a century earlier, ‘Odal rights and feudal wrongs’. Dickinson’s article reported a case in the Sheriff Court of Shetland concerning partible inheritance of ‘udal land’. In judging disputed inheritance on intestacy, the court in 1893 upheld ‘udal succession’, ordering the disputed land to be divided equally among the heirs – two sons and a daughter – rather than following the Scots law of primogeniture; however, nor did it follow either the old Norse legal rule that daughters should receive a half share compared to sons.⁷⁰

Between 1890 and 1990, five cases involving ‘udal’ tenure were judged by the Court of Session in Edinburgh. In 1890, the Hoswick whale case concerned a Shetland landowner’s claim to a one-third share of pilot whales driven onto his shore, which was contested by the captors. Although such claims had been recognized

69 Goudie 1904 [1871–1892]; Johnston and Johnston 1907–13; Clouston 1914; 1932; Marwick 1951; B. Smith 2003b

70 Johnston 1920; Johnston and Johnston 1907–13: xliii; Clouston 1914: lxxvii–lxxviii; Dobie 1931; Manson 1949; Dickinson 1954; Stewart 1954

in earlier court decisions, it was rejected in 1890 on the grounds that it was an unreasonable custom. The decision was reached by majority verdict, the dissenting judgment being that the system of law in Shetland differed from the common law of Scotland in certain respects, and that Scots law concerning foreshore was not applicable in Shetland. In 1903, a merchant's claim to foreshore adjoining his udal land in Lerwick was upheld, allowing him to build on the foreshore known as Sinclair's Beach. On the mainland of Scotland, the foreshore belongs to the Crown. In 1907, in the Balfour case, an Orkney landowner's claim to salmon-fishing rights as riparian owner was upheld, even though his land was held on a feudal title. While under Scots law salmon-fishing belongs to the Crown as feudal superior (although alienable to individuals), the court ruled that salmon-fishings did not constitute a separate feudal estate in Orkney and Shetland, but are a part of and are pertinent to landownership. The right of salmon-fishing had never been claimed by the Crown of Norway, and thus never conferred on the Scottish Crown. In 1963, in the St Ninian's Isle treasure case, a claim was rejected that the treasure trove found on udal land should be divided according the Magnus Code: one-third to the finders, one-third to the landowner, and one-third to the Crown. The court ruled that, although the land was held under allodial tenure, the right of treasure belonged to the Crown, not as feudal superior but as part of its sovereign rights. Finally, in 1990, the Shetland Salmon Farmers' Association contested Crown ownership of the seabed, but lost the case. The association argued that under 'old Norwegian laws, popularly known as udal law' the Crown could not be owner of the seabed around the Northern Isles since the Norwegian Crown had never claimed the seabed in Norway. The court found that the seabed belonged to the Crown as part of its sovereign rights, not its rights as feudal superior. Thus, 'udal rights' were upheld in two of these five cases, but rejected in three of them, once on the grounds that it was an unreasonable custom and twice (in the treasure and seabed cases) that they concerned the Crown's sovereign rights.⁷¹

These lawsuits produced a body of legal commentaries. Drever discussed udal law and the foreshore at the time of the Sinclair's Beach case in 1904. T.B. Smith, who acted as legal counsel for the finders of the St Ninian's Isle treasure, wrote in 1973 on 'the law relating to the treasure' in an account of the find. David Smith wrote in 1978 on 'udal law' in the *Shetland Report*, a constitutional study for the Shetland Islands Council prepared under the chairmanship of Lord Kilbrandon. Knut Robberstad, who had given evidence in the St Ninian's Isle case, published an article titled 'Udal law' in 1983. In an article in *The Laws of Scotland: Stair Memo-*

71 Ryder 1989; T. Smith 1989; Jones 1996a; 1996b; 2012a: 397–98

rial Encyclopaedia in 1987, David Sellar discussed ‘udal law’ in an examination of the implications of the Hoswick whale case in relation to custom as a source of law in Scotland. In the same encyclopaedia in 1989, Jane Ryder provided a comprehensive discussion of all aspects of ‘udal law’, together with a posthumous editorial excursus by the late editor, Sir Thomas Smith. William Howarth called his discussion of salmon, the Crown estate, and ‘udal law’ in 1988 ‘a Norse saga’. D.J. Cusine summarized ‘udal law’ in an article in 1997. Derek J. McGlashan discussed udal law and coastal landownership in articles in 2002 and 2004. Brian Smith revisited historical whale drives in an article in 2003 and concluded that their relation to ‘udal law’ was tenuous.⁷²

On the basis of some 70 qualitative interviews, undertaken mostly in 1986, I investigated modern perceptions of ‘udal law’. I found that the meanings and functions attributed to ‘udal law’ varied among different social groups. Townspeople in Orkney and Shetland generally had anecdotal knowledge of ‘udal law’. Some mentioned disputes over building on the foreshore. Others saw it in a somewhat romantic light as part of local history or contributing to their identity – sometimes as part of the Viking heritage used to promote tourism – but for most it had little practical significance. The legal profession, represented by local solicitors, mostly regarded ‘udal law’ as having eroded over time and existing as a few survivals within the framework of Scots law, principally private ownership of the foreshore and salmon-fishing rights. Their training was in Scots law, but some were willing to defend ‘udal law’ if they thought it could be legally upheld (as in the ultimately unsuccessful seabed case). Estate owners and crofters mentioned especially economic aspects connected to foreshore and salmon-fishing rights. Finally, I found a few small landowners who spoke of the practice of partible inheritance and rights of kin in living memory. These vestiges of family customary land rights are the essence of ‘udal rights’, although the poorest documented in modern times.⁷³

Conclusion

Apart from a few sporadic earlier references, the term ‘udal law’ as such appears to date from 1900, when it became established as a term in legal commentaries.

⁷² Drever 1904; T.B. Smith 1973; D. Smith 1978; Robberstad 1983; Sellar 1987: 191–94; Howarth 1988; Ryder 1989; T. Smith 1989; Cusine 1997; McGlashan 2002; B. Smith 2003a; McGlashan et al. 2004

⁷³ Jones 1996a

However, its content in the twenty-first century consists of vestigial survivals in Orkney and Shetland of Norse law as custom within the body of Scots law, especially related to land tenure (also referred to as ‘udal tenure’). Notions of ‘udal rights’ have been invoked in a series of lawsuits from the seventeenth to the twentieth century. The Pundlar Process in the eighteenth century and accompanying debates were important in arousing public awareness of surviving Norse practices. Udal awareness has been maintained through historical and topographical–geographical accounts as well as legal commentaries and political polemics from the seventeenth century to the present. The notion became incorporated in fiction, both novels and poetry, from the nineteenth century onwards. ‘Udal law’ as part of the Norse past continues to be evoked in literature as well as in travel guides, newspaper debates, and, in the twenty-first century, on web sites as a particular characteristic of Orkney and Shetland and as one marker (among others) of the islands’ identity, even if its legal significance has become marginal.

Bibliography

- Anderson, Joseph (ed.), *The Orkneyinga Saga*, translated by Jon A. Hjalalin & Gilbert Goudie, Edinburgh 1981 [1873]
- Anderson, Peter D., *Robert Stewart, Earl of Orkney, Lord of Shetland, 1533–1593*, Edinburgh 1982
- , *Black Patie: The Life and Times of Patrick Stewart, Earl of Orkney, Lord of Shetland*, Edinburgh 1992
- Anon., Shetland, in David Brewster (ed.) *The Edinburgh Encyclopædia*, vol. XVIII (London and New York 1999 [1830]): 82–112
- Association of Landowners of Orkney, *Memorial of the Association of Landowners of Orkney on the Crofters’ Holdings (Scotland) Act of 1886* (1893)
- Baigent, Elizabeth, Laing, Samuel (1780–1868), in H.G.C. Matthew, and B. Harrison (eds.) *Oxford Dictionary of National Biography*, vol. 32 (Oxford 2004): 228–229
- Balfour, David, *Oppressions of the Sixteenth Century in the Islands of Orkney and Shetland from Original Sources*, Edinburgh 1859
- , *Odal Rights and Feudal Wrongs: A Memorial for Orkney*, Edinburgh 1860
- Ballantyne, John H., & Smith, Brian (eds.), *Shetland Documents 1580–1611*, Edinburgh 1994
- , *Shetland Documents 1195–1579*, Edinburgh 1999

- Barclay, Robert S. (ed.), *The Court Book of Orkney and Shetland 1612–1613*, Kirkwall 1962
- , *The Court Book of Orkney and Shetland 1614–1615*, Edinburgh 1967
- Barry, George, *The History of the Orkney Islands*, Edinburgh 1975 [1805]
- Batho, Edith C., & Husbands, H. Winifred, *The Chronicles of Scotland*, compiled by Hector Boece; translated into Scots by John Bellenden, 1531, vol. II, Scottish Text Society 3rd series, 15, Edinburgh 1941
- Brand, John, *A Brief Description of Orkney, Zetland, Pightland-Firth & Caithness*, Edinburgh 1883 [1701]
- Broadie, Alexander, *The Scottish Enlightenment: The Historical Age of the Historical Nation*, Edinburgh 2001
- Clouston, J. Storer (ed.), *Records of the Earldom of Orkney 1299–1614*, Publications of the Scottish History Society, Second Series, vol. VII, Edinburgh 1914
- , *A History of Orkney*, Kirkwall 1932
- Cohen, Bronwen J., *Norse Imagery in Shetland: An Historical Study of Intellectuals and their Use of the Past in the Construction of Shetland's Identity, with Particular Reference to the Period 1800–1914* (Ph.D. thesis, University of Manchester 1983)
- Craig, Thomas, *The Jus Feudale: With an Appendix Containing the Books of the Feus*, vol. I, transl. by James Avon Clyde, Edinburgh 1934 [1655]
- , *De Unione Regnorum Britanniae Tractatus*, ed. and transl. by C. Sanford Terry, Edinburgh 1909 [1605]
- Cusine, D.J., Udal law, *Northern Studies*, 32 (1997): 33–45
- Cuthbert, Olaf D. (ed.), *A History of the Orkneys Introduced by A Description of the Islands and their Inhabitants by George Low (1747–1795)*, Kirkwall 2001
- D'Arcy, Julian Meldon, *Scottish Skalds and Sagamen: Old Norse Influence on Modern Scottish Literature*, East Linton 1996
- Dasent, Sir George Webbe, *The Story of Burnt Njal*, London and New York 1971 [1861]
- Davis, Thomas, Norway and Ireland: Udalism and feudalism, *The Dublin Monthly Magazine* (1842): 218–236, 293–315.
- Dickinson, William Croft, Odal rights and feudal wrongs, in W. Douglas Simpson (ed.) *The Viking Congress, Lerwick, July 1950* (Edinburgh and London 1954): 142–60
- Dobie, Wm. Jardine, 'Udal and feudal': The conflict of laws in Orkney and Shetland, *Juridical Review*, 43 (1931): 115–126

- , Udal law, in *The Stair Society: An Introductory Survey of the Sources and Literature of Scots Law* (Edinburgh 1936): 445–60
- Donaldson, Gordon (ed.), *The Court Book of Shetland 1602–1604*, Edinburgh 1954
- , *Shetland Life under Earl Patrick*, Edinburgh 1958
- , Norse and Scottish law in Shetland: The background, in Kilbrandon, Lord, chairman, *The Shetland Report: A Constitutional Study*, Edinburgh 1978: 179–95
- , Problems of sovereignty and law in Orkney and Shetland, in David Sellar (ed.) *The Stair Society: Miscellany Two*, Publications of the Stair Society, vol. 35 (Edinburgh 1984): 13–40
- , (ed.), *Court Book of Shetland 1615–1629*, Lerwick 1991
- Drever, W.P., Udal law, in John Chisholm (ed.) *Green's Encyclopædia of the Law of Scotland*, vol. XIII (Edinburgh 1900): 28–38
- , Udal law and the foreshore, *Juridical Review* (JR), 16 (1904): 189–202
- , Udal law, in Viscount Dunedin, John L. Wark & A.C. Black (eds.) *Encyclopædia of the Laws of Scotland*, vol. XV (Edinburgh 1933 [1914]): 321–36
- Edmonston, Arthur, *A View of the Ancient and Present State of the Zetland Islands; Including their Civil, Political, and Natural History; Antiquities; and an Account of their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, 2 vols. Edinburgh 1809
- Falk, Hjalmar, & Torp, Alf, *Etymologisk ordbog over det norske og det danske sprog*, Kristiania 1903–1906
- Fenton, Alexander, *The Northern Isles: Orkney and Shetland*, Edinburgh 1978
- Fereday, R.P., William Balfour after the '45: His relations with the Earl of Morten and Sir Lawrence Dundas 1747–1769, *Orkney Heritage*, 1 (1981): 22–59
- , *The Orkney Balfours 1747–99: Trenaby and Elwick*, Oxford 1990
- , (ed.), *The Autobiography of Samuel Laing of Papdale 1780–1868*, Kirkwall 2000
- , Samuel Laing of Papdale, Orkney: A kelp-laird's political ambitions, 1824–1834, in Doreen J. Waugh (ed.) *The Faces of Orkney: Stones, Skalds and Saints*, Edinburgh 2003: 94–107
- Flinn, Derek, *Travellers in a Bygone Shetland: An Anthology*, Edinburgh 1989
- Gifford, Thomas, *An Historical Description of the Zetland Islands in the Year 1733*, Shetland 1976 [1786]
- Goudie, Gilbert, *The Celtic and Scandinavian Antiquities of Shetland*, Edinburgh and London 1904 [1871–1892]

- Hagland, Jan Ragnar, & Sandnes, Jørn (transl.), *Frostatingslova*, Norrøne bokverk, Oslo 1994
- Hall, James, *Travels in Scotland by an Unusual Route: With a Trip to the Orkneys and Hebrides, Containing Hints for Improvements in Agriculture and Commerce*, London 1807
- Hall, Simon W., *The History of Orkney Literature*, Edinburgh 2010
- Helle, Knut, *Gulatinget og Gulatingslova*, Leikanger 2001
- Hepburn, Thomas, *A Letter to a Gentleman from his Friend in Orkney (Written in 1757) Containing the True Causes of the Poverty of that Country*, Edinburgh 1885 [1760]
- Hewison, W.S., *Who Was Who in Orkney*, Kirkwall 1998
- Hibbert, Samuel, *A Description of the Shetland Islands Comprising an Account of their Scenery, Antiquities, and Superstitions*, Lerwick 1891 [1822]
- , Memoir on the tings of Orkney and Shetland, *Archaeologia Scotica*, 3 (1831), 103–210
- Highland Society of Scotland, *A Letter, by the Landholders of Shetland, to the Honourable The Highland Society of Scotland, February 1802*, Edinburgh 1802
- Howarth, William, A Norse saga: The salmon, the Crown Estate and the udal law, *Juridical Review* (1988): 91–116
- Johnston, Alfred W., *Summary of the Objects and Constitution of the Udal League*, London 1887
- , Óðal law in Orkney and Shetland, *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland*, 8 (1920): 47–59
- Johnston, Alfred W. & Johnston, Amy (eds.), *Orkney and Shetland Records*, vol. I, parts I–IV, Old-Lore Series, vol. VII (London 1907–1913)
- Jonæus, Jonas (ed.), *Orkneyinga Saga sive Historia Orcadensium a Prima Orcadum per Norvegos Occupatione ad Exitum Seculi Duodecimi: Saga hins Helga Magnusar Eyia Jarls sive Vita Sancti Magni Insularum Comitiss*, Hafniæ 1780
- Jones, Michael R.H., Perceptions of udal law in Orkney and Shetland, in Doreen J. Waugh (ed.) *Shetland's Northern Links: Language and History*, Edinburgh 1996a: 186–204
- , Scots and Norse in the landscape of Orkney and Shetland: Visible landscape and mental landscape, in Frederick H.A. Aalen & Mark Hennessy (eds.) *Proceedings of the Permanent European Conference for the Study of the Rural Landscape: Papers from the 17th Session, Trinity College Dublin, 1996*, Dublin 1996b [2001]: 4–10

- , Law and landscape – some historical-geographical studies from northern Europe, in Tiina Peil & Michael Jones (eds.) *Landscape, Law and Justice: Proceedings of a Conference Organised by the Centre for Advanced Study at the Norwegian Academy of Science and Letters, Oslo 15–19 June 2003*, Instituttet for sammenlignende kulturforskning, Serie B: Skrifter, vol. CXVIII (Oslo 2005): 95–109
- , Landscape, law and justice – concepts and issues, *Norsk Geografisk Tidsskrift–Norwegian Journal of Geography* (NGT–NJG), 60, Special issue: Essays on Landscape, Law and Justice (ed. Michael Jones) (2006): 1–14
- , Contested rights, contested histories: Landscape and legal rights in Orkney and Shetland, in Shelley Egoz, Jala Makhzoumi & Gloria Pungetti (eds.) *The Right to Landscape: Contesting Landscape and Human Rights* (Farnham – Burlington, VT 2011): 71–83
- , Udal law, in Mark A. Mulhern (ed.) *Scottish Life and Society: A Compendium of Scottish Ethnology*, vol. 13, *The Law*, (Edinburgh 2012a): 389–417
- , Udal law and contested histories of land tenure and landscape in Orkney and Shetland, in Inese Stūre & Oļģerts Nikodemus (eds.) *Proceedings of the 24th Session of PECSRL – Permanent European Conference for the Study of Rural Landscape: Living in Landscapes: Knowledge, Practice, Imagination*, Latvijas Zinātņu Akadēmijas Vēstis, A daļa: Sociālās un humanitārās zinātnes, 66: 3 (Riga (2012b): 105–18
- , Playing the indigenous card? The Shetland and Orkney Udal Law group and indigenous rights, *GeoJournal* 77, Special Issue: Geography for and with Indigenous Peoples: Indigenous Geographies as Challenge and Invitation (eds. Klaus Franz & Richard Howitt) (2012c [2010]): 765–75
- , ‘I do not know in Scotland a valley so beautiful ...’: Samuel Laing’s topographical–geographical observations in Central Norway, 1834–1836, *Journal of the North Atlantic*, Special Volume, 4 (2013): 207–218
- Kemp, John, *Observations on the Islands of Shetland, and their Inhabitants; and, on the Climate, Soil, State of Agriculture, Fisheries &c. of that Country: With Hints for their Improvement*, Edinburgh 1801
- Laing, Samuel, *A Journey of a Residence in Norway during the Years 1834, 1835, & 1836; Made with a View to Enquire into the Moral and Political Economy of that Country, and the Condition of its Inhabitants*, 2nd edition, Edinburgh 1837 [1836]
- , (ed.), *The Heimskringla, or Chronicle of the Kings of Norway: Translated from the Islandic of Snorro Sturleson, with a Preliminary Dissertation*, 3 vols., London 1844

- Larson, Laurence M. (transl.), *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law*, New York 1935
- Lindquist, Ole, *Whales, Dolphins and Porpoises in the Economy and Culture of Peasant Fishermen in Norway, Orkney, Shetland, Faeroe Islands and Iceland, ca 900–1900 AD, and Norse Greenland, ca 1000–1500 AD* (Ph.D. thesis, University of St Andrews 1994)
- Low, George, *A Tour through the Islands of Orkney and Schetland Containing Hints Relative to their Ancient and Modern and Natural History Collected in 1774*, Kirkwall 1879
- McDouall, Andrew, *An Institute of the Laws of Scotland in Civil Rights: With Observations on the Agreement or Diversity Between Them and the Laws of England. In Four Books: After the General Method of the Viscount of Stair's Institutions*, vol. I, Edinburgh 1751
- McGlashan, Derek J., Udal law and coastal land ownership, *Juridical Review* (2002): 251–60
- McGlashan, Derek J., Duck, Robert W., & Reid, Colin T., The foreshore: Geographical implications of the three legal systems in Great Britain, *Area*, 36 (2004): 338–47
- MacGillivray, Evan (ed.), Richard James, 1592–1638 – Descriptions of Shetland, Orkney and the Highlands of Scotland, *Orkney Miscellany*, 1 (1953): 48–56
- Mackenzie, James, *The General Grievances and Oppression of the Isles of Orkney and Shetland*, Edinburgh 1836 [1750]
- Manson, T.M.Y., *Suggested Topics for Conference at Lerwick in 1950 of British and Foreign Experts on Northern History, etc.* (Privately printed, 1949)
- Martin, Martin, *A Description of the Western Isles of Scotland Circa 1695*, Edinburgh 1999 [1703]
- Marwick, Hugh, *Orkney* The County Books Series, London 1951
- Mitchell, Arthur, & Clark, James Toshach (eds.), *Geographical Collections Relating to Scotland Made by Walter Macfarlane, Edited from Macfarlane's Transcript in the Advocates' Library*, vol. III, Publications of the Scottish History Society, vol. LIII, Edinburgh 1908
- Monteith, Robert, *The Description of the Islands of Orkney and Zetland: With the Mapps of them, Done from the Accurat Observation of the Most Learned who Lived in these Isles*, Edinburgh 1711 [1633]
- Neill, Patrick, *A Tour through Some of the Islands of Orkney and Shetland, with a View Chiefly to Objects of Natural History, but Including also Occasional Remarks on the State of the Inhabitants, their Husbandry and Fisheries*, Edinburgh 1806

- Peterkin, Alexander, *Rentals of the Ancient Earldom and Bishopricks of Orkney; with Some Other Explanatory and Relative Documents*, Edinburgh 1820
- , *Notes on Orkney and Zetland: Illustrative of the History, Antiquities, Scenery, and Customs*, Edinburgh 1822
- Porter, Bernard, Virtue and vice in the north: The Scandinavian writings of Samuel Laing, *Scandinavian Journal of History*, 23 (1998): 153–72
- Renwanz, Marsha Elizabeth, *From Crofters to Shetlanders: The Social History of a Shetland Island Community's Self Image, 1872–1978* (Ph.D. thesis, Stanford University 1980)
- Robberstad, Knut, The odal right according to the old Norwegian laws, in Kjell Falck (ed.) *Annen Viking Congress: Bergen 1953*, Universitetet i Bergen Årbok 1955, Historisk-antikvarisk rekke Nr. 1 (Bergen 1955): 34–40
- , Odelsrett: Norge, *Kulturhistorisk leksikon for nordisk middelalder*, vol. XII, Oslo 1967: 493–99
- , (transl.), *Gulatingslovi*, Fjerde utgåva, Norrøne bokverk, 33 (Oslo 1981 [1937])
- , Udal law, in Donald J. Withrington (ed.) *Shetland and the Outside World 1469–1969*, Aberdeen University Studies Series, no. 157 (Oxford 1983): 49–68
- Ryder, Jane, Udal law (ed. W. David H. Sellar), in *The Laws of Scotland: Stair Memorial Encyclopaedia*, vol. 24 (Edinburgh 1989): 193–219
- Scott, Sir Walter, *The Pirate*, London, Edinburgh and New York 1904 [1822]
- , *Northern Lights or a Voyage in the Lighthouse Yacht to Nova Zembla and the Lord Knows Where in the Summer of 1814*, Hawick 1982
- Seibert, Sebastian, *Reception and Construction of the Norse Past in Orkney*, *Imaginatio Borealis, Bilder des Norden*, vol. 16, Frankfurt am Main 2008 [2006]
- Sellar, W. David H., Custom as a source of law, in Sir Thomas Smith (ed.) *The Laws of Scotland: Stair Memorial Encyclopaedia*, vol. 22 (Edinburgh 1987): 176–98
- Shaw, Frances J., *The Northern and Western Islands of Scotland: Their Economy and Society in the Seventeenth Century*, Edinburgh 1980
- Shirreff, John, *General View of the Agriculture of the Orkney Islands; with Observations on the Means of Improvement; Drawn up for the Consideration of the Board of Agriculture*, Edinburgh – London 1814a
- , *General View of the Agriculture of the Shetland Islands; with Observations on the Means of Improvement; Drawn up for the Consideration of the Board of Agriculture*, Edinburgh – London 1814b
- Sinclair, John (ed.), *General View of the Agriculture of the Northern Counties of*

- Scotland; Including the Counties of Cromarty, Ross, Sutherland, and Caithness, and the Islands of Orkney and Shetland: With Observations on the Means of Improvement*, London 1795
- Smith, Brian, Earl Robert and Earl Patrick in Shetland: Good, bad or indifferent? *New Orkney Antiquarian Journal*, 1 (1999): 6–16
- , Pilot whales, udal law and custom in Shetland: Legal red herrings, *Northern Scotland*, 23 (2003a), 85–97
- , Holy Moses! Orkney historians on medieval Orkney, *New Orkney Antiquarian Journal*, 3 (2003b): 2–14
- , Udal law: Salvation or romantic fiction? *The Shetland Times* (3 October 2003c): 18–19
- , On the nature of tings: Shetland’s law courts from the middle ages until 1611, *The New Shetlander*, 250 (2009) 37–45
- Smith, David, Udal law, in Lord Kilbrandon, *The Shetland Report: A Constitutional Study Prepared for the Shetland Islands Council by the Nevis Institute under the Chairmanship of Lord Kilbrandon* (Edinburgh 1978): 197–203
- Smith, T.B., The law relating to the treasure, in Alan Small, Charles Thomas, David M. Wilson, Kenneth Jackson, Hugh McKerrell & T.B. Smith *St. Ninian’s Isle and Its Treasure*, vol. I, Aberdeen University Studies Series, no. 152 (Oxford 1973): 149–66
- Smith, Sir Thomas, Udal law: Editorial excursus by the late Sir Thomas Smith (ed. W. David H. Sellar), in *The Laws of Scotland: Stair Memorial Encyclopaedia*, vol. 24 (Edinburgh 1989): 219–30
- Stair, James, Viscount of, *The Institutions of the Law of Scotland Deduced from its Originals, and Collated with the Civil and Feudal Laws and with the Customs of Neighbouring Nations in Four Books*, vol. II, vol. IV, Edinburgh 1826–1827 [1681]
- Stewart, John, Udal law and government in Shetland, in W. Douglas Simpson (ed.) *The Viking Congress, Lerwick, July 1950* (Edinburgh and London 1954): 84–111
- Szabo, Vicki Ellen, *Monstrous Fishes and the Mead-Dark Sea: Whaling in the Medieval North Atlantic*, The Northern World: North Europe and the Baltic c.400–1700 AD, People, Economies and Cultures, vol. 35, Leiden 2008
- Taranger, Absalon (transl.), *Magnus Lagabøters landslov*, Christiania 1915
- Thomson, William P L., The Udal League, *The Orkney View*, 2 (1985), 15–17
- , *Lord Henry Sinclair’s 1492 Rental of Orkney*, Kirkwall 1996
- , *The New History of Orkney*, Edinburgh 2001

- Torfæus, Thormodus, *Orcades, seu rerum Orcadensium Historiae libri tres* (Havniæ 1697)
- , *Ancient History of Orkney, Caithness and the North*, transl. Alexander Pope, Wick 1866 [1697]
- Townsend, J.A.B., The Viking Society: A centenary history, *Saga-Book*, 23 (1992), 180–212
- Traill, Thomas Stewart, Orkney Islands, in David Brewster (ed.) *The Edinburgh Encyclopædia*, vol. XVI (London and New York 1999 [1830]): 1–15.
- Traill, Walter, *Vindication of Orkney*, Edinburgh 1823
- Wallace, James, *A Description of the Isles of Orkney*, Edinburgh 1693
- Wawn, Andrew, *The Vikings and the Victorians: Inventing the Old North in Nineteenth-century Britain*, Cambridge 2000
- Wills, Jonathan, The Uyea whale case, *The New Shetlander*, 114 (1975): 12–15
- Øien, Torhild, The Northern Isles – between two nations, *Northern Studies*, 39 (2005), 80–104

Part 3
Law and legislation in
Iceland from Free state to
Monarchy



Chapter 9: Ideas of Law in Medieval Icelandic Legal Texts¹

Patricia Pires Boulhosa

According to *Íslendingabók*, the origins of the Icelandic laws were to be found in Norway. In the middle of the tenth century, the laws were set according to those of the Gulapíng of western Norway, and also according to the advice of a certain Þorleifr the wise, who indicated the points at which material should be added or removed, or set in a different way:

And when Iceland had been widely settled, an Easterner first brought laws out here from Norway – he was called Úlfljótr, so Teitr told us – and [they] were then called Úlfljótr's laws (he was the father of Gunnarr, from whom the people of Djúpadalr are descended in Eyjafjörðr); they were mostly set according to what the laws of the Gulapíng were at the time or the advice of Þorleifr the wise, son of Hjörðá-Kári, on where [things] should be added or omitted or set up differently.²

The language here is careful – Úlfljótr brought laws to Iceland; the text does not speak of law books, or even written laws. These laws, it seems, were materials from which other laws were set up in Iceland with the advice of a wise man. The passage seems to speak of 'lög' in one of the original senses – 'things laid down' – and not as a fixed or permanent set of rules (let alone codified laws). What resulted from Þorleifr's work and the laws of the Gulapíng were called 'Laws of Úlfljótr'.

1 I am especially indebted to Stephen Pax Leonard, with whom I have discussed some of the questions addressed in this chapter, and whose works I have consulted.

2 *Íslendingabók*: 6–7. 'En þá es Ísland vas víða byggt orðit, þá hafði maðr austrænn fyrst lög út hingat ýr Norvegi, sá es Úlfljótr hét; svá sagði Teitr oss; ok váru þá Úlfljótslög kōlluð; – hann vas faðir Gunnars, es Djúpdælir eru komnir frá í Eyjafirði; – en þau váru flest sett at því sem þá váru Golaþingslög eða ráð Þorleifs ens spaka Hjörðá-Kárasonar váru til, hvar við skyldi auka eða af nema eða annan veg setja.' I follow Siân Grønlie 2006: 4, 18 (and references given therein) in translating 'maðr austrænn' as 'easterner' as, along with 'Norwegian', the term may also point to an east Norwegian (or Swedish) origin. On the manuscripts of *Íslendingabók*, see Hreinn Benediktsson 1965: 23–24 and Jón Jóhannesson 1956: 17–19. According to the chronology of *Íslendingabók*, Úlfljótr's laws would have been established in c. 927.

Later in *Íslendingabók*, it is said that about 190 years after Úlfljótr came from Norway with ‘laws’, a decision was taken to have them written into a book:

The first summer that Bergþórr recited the law, a new law was made that our laws should be written down in a book in the following winter, at the home of Hafliði Másson, after the account and guidance of Hafliði, Bergþórr, and other wise men who were called for this.³

After almost two centuries of use, change, and development, the ‘laws of Úlfljótr’ have become ‘our laws’ – a phrase which seems to express the idea of ‘laws of Icelanders’. As scholars have noted, there is a clear Icelandic perspective in *Íslendingabók*; in addition to ‘our laws’ in the passage just quoted, *Íslendingabók* also uses ‘our bishops’, ‘our reckoning’, and ‘our countrymen’.⁴ Another early Icelandic work, *The First Grammatical Treatise*, was aimed at creating Icelandic linguistic self-awareness, and employs phrases such as ‘us Icelanders’ and ‘our language’.⁵ Stephen Pax Leonard has analysed the use of phrases such as ‘vár lög’ (‘our laws’), ‘vár tunga’ (‘our language’), and ‘vårt land’ (‘our country’) in Icelandic texts. The use of these phrases, writes Leonard, ‘tends to be a register-specific phenomenon, found only in legal codes, historical texts and grammatical treatises’.⁶ In the case of *Íslendingabók* and *The First Grammatical Treatise*, this style of self-referentiality may be seen as a marker of Icelandic identity.⁷

It is possible, then, to understand ‘our laws’ in the passage in *Íslendingabók* as ‘laws of Icelanders’, but its use in the opening to the Christian laws in the *Konungsbók* manuscript of *Grágás* deserves further consideration:

It is the beginning of our laws that all people here in the country must be Christian and believe in one God – Father, Son, and Holy Spirit.⁸

3 *Íslendingabók*: 23. ‘Et fyrsta sumar, es Bergþórr sagði lög upp, vas nýmæli þat gort, at lög ór skyldi skrifa á bók at Hafliða Mássonar of vetrinn eptir at sögu ok umbráði þeira Bergþórs ok annarra spakra manna, þeira es til þess váru teknir.’

4 *Íslendingabók*: 3, 11, 15.

5 Leonard 2012: 130; Grønlie 2006: xxiv. *The First Grammatical Treatise*: 208.

6 Leonard 2012: 131. Leonard also remarks that the use of such phrases could be due to chronology as the texts in which they occur are among the earliest Icelandic writings.

7 Leonard 2012: 131–32 argues that in the case of legal texts, it is difficult to claim that the use of phrases such as ‘our laws’ acts as an identity marker, despite law being an important medium of expression of Icelandic identity. See Boulhosa 2005: 193–95, 212.

8 *Grágás-Konungsbók* I: 3. ‘Þat er upphaf laga vaRa. at allir menn scola kristnir vera a landi her. oc trva a eiN Guþ föpur oc son oc helgan anda.’

The phrase ‘vár lög’ also appears as a formulaic opening to the Christian laws in manuscripts of the Norwegian *Gulapingslög*, *Frostapingslög*, and *Borgarþingslög*, and to the Swedish *Guta lag*, and there are occurrences of the phrase in secular contexts in the *Grágás* laws, *Gulapingslög*, and *Frostapingslög*.⁹ ‘Our laws’ seems to be a self-referential expression in each of these legal texts, referring to a different group of people in each of these texts.¹⁰

In *Grágás* and the *Gulapingslög*, the formula works as the opening to the whole body of laws as the Christian laws are recorded right at the beginning of the legal text; this might also have been the case in the *Frostapingslög* and *Borgarþingslög*, but the evidence from the manuscripts is inconsistent: the earliest complete manuscript of the *Frostapingslög* dates from the eighteenth century and there are no extant manuscripts of the secular laws of the *Borgarþingslög*.¹¹ Given the particular nature of both laws and legal manuscripts,¹² I shall limit my analysis to *Konungsbók* and *Staðarhólsbók*, the two thirteenth-century manuscripts of *Grágás* and, as comparative material, the thirteenth-century manuscript of the laws of the *Gulaping*, *Codex Rantzovianus*.¹³ Besides, although the passage on the origins of the laws of Iceland in *Íslendingabók* cannot be taken entirely at face value – its historicity is not unproblematic, not to mention its ideological dimension¹⁴ – it is worth investigating whether early connections between Icelandic and Norwegian laws, if such connections can be detected in the laws in their extant form, can tell us something about the concept of ‘law’ itself.

As pointed out earlier, the phrase ‘our laws’, which appears at the opening of the Christian laws in *Grágás*, is also found at the opening of the laws of *Gulaping*, which starts in this way:

9 NgL I: 3, 130, 339. *Guta lag och Guta saga*: 3.

10 Leonard 2012: 129.

11 NgL I: 119–20, 338.

12 As I have discussed the methodological difficulties in working with Icelandic and Norwegian legal manuscripts in Boulhosa 2005: 45–58, I shall not repeat them here. It may suffice to say that the thirteenth-century legal manuscripts (*Konungsbók*, *Staðarhólsbók*, and *Codex Rantzovianus*) contain layers of laws belonging to different periods of time. As each act of recording includes laws contemporary to that particular moment, working solely with thirteenth-century manuscripts provides a terminus a quem for all legal texts and their respective historical context, scribal traditions, and manuscript transmission.

13 *Konungsbók* (GKS 1157 fol.) is dated c.1250, *Staðarhólsbók* (AM 334 fol.) to c.1260–70), and *Codex Rantzovianus* (DonVar 137 4°) to c.1250–1300. ONP: 259–62. The datings of manuscripts are taken from ONP unless stated otherwise.

14 Lindal (1969: 6–9), Lindow 1997, Halldór Hermannsson 1930: 26–36, 75, Grønlie 2006: 18–19, Norseng 1991: 140–42.

It is the beginning of our laws that we should bow toward the east and pray to the Holy Christ for good harvest and peace; and that we keep our settled land and our sovereign lord in health. Let him be a friend to us and we to him. And may God be a friend to all.¹⁵

There is a great deal of self-referentiality or self-identification in *Grágás* and the *Gulapingslög*,¹⁶ and the occurrence of ‘our laws’ in *Grágás* may be explained as semantic and conceptual continuity between the Norwegians in Norway and the settlers in Iceland. Stefán Einarsson has demonstrated the level and variation of semantic continuity between Norway and Iceland in the usage of terms of spatial orientation throughout Icelandic mediaeval literature. Icelanders adopted the spatial terminology of their Norwegian ancestors in terms such as ‘inn’ (‘into’), ‘út’ (‘out’), ‘upp’ (‘up’), ‘ofan’ (‘from above’), as well as in terms of orientation which were peculiar to the geography of Norway, such as ‘landsuðr’ (‘southwards by land’, that is, ‘south-east’) and ‘landnorðr’ (‘northwards by land’, that is ‘north-east’), and others. Travelling to Norway from Iceland was described from a Norwegian perspective – ‘að fara útan’ (‘travelling from without’), and as ‘út’ in Norway was equivalent to ‘west’, ‘útnorðr’ indicated ‘northwards and out to the sea (west)’.¹⁷

The semantic and conceptual continuity of terms of spatial orientation is relevant because, in addition to its literal meaning, ‘our laws’ can also have a geographical dimension in the legal texts. For example, *Gulapingslög* § 3 states that *lendir menn* (landholders) ‘er innan ero laga várra scoló fara til lögbingis or þeima .vi. fylkium’ (‘who are from within our laws must go to the *lögbing* from these six districts’).¹⁸ In modern terminology, ‘er innan ero laga várra’ may be understood as ‘who are within our jurisdiction’; in this specific case, the jurisdiction of the six *fylki* all of whose (male) inhabitants formed the Gulapíng – ‘aller Gulapings menn’.¹⁹

15 NgL I: 3. ‘Þat er upphaf laga varra at ver scolom luta austr oc biðia til hins helga Crist ars oc friðar. oc þess at vér halldem lande varo bygðu. oc lánar drotne varom heilum. se hann vinr varr. en ver hans. en guð se allra varra vinr.’

16 For example, in the *Gulapínglög*: NgL I: 3 § 1, 7 §§ 9–10, 34 § 68, 47 § 102, 53 § 120, 94 § 281, 95 § 286, 97 § 298; *Grágás-Konungsbók* I: 3 § 1, 19 § 5, 28 § 11, 29 § 12, 30 § 13, 33 § 15, 38 § 20; II: 128 § 78, 205 § 114, 211 § 117; and *Grágás-Staðarhólsbók*: 1 § 1, 46 § 36, 54 § 44, 249 § 217, 263 § 231.

17 Einarsson 1944: 279; Einarsson 1945: 61; Leonard 2007: 158, 160. See also Lindow 1994: 217–18; Jackson 1998–2001 and references given therein.

18 NgL I: 4 § 3.

19 NgL I: 5 § 4.

‘Our laws’ could also refer to other (smaller) jurisdictions, that is to say, to smaller geographical territories. The *fylki* were divided into four parts, *fjórðungar* (sing. *fjórðungr*, ‘quarter’),²⁰ and there were smaller geographical divisions such as the *hérað*²¹ and the *kaupangr* (‘trading place’), which had their own courts with original jurisdiction over specific cases; these jurisdictions were hierarchically set up in case of appeals. *Gulapingslög* § 120, which deals with inheritance claims, states that *hérað* rights should concern the dealings in the *hérað* and ‘allt þat er i kaupangre er gort. þa scal þat at kaupangrs rette skipta’ (‘all that is done in the *kaupangr* must concern *kaupangr*-rights’).²²

Notwithstanding the existence of many geographical divisions and jurisdictions (e.g. someone could be ‘utan fylkis’, ‘innan fjórðongs’, ‘innan fylkis’, ‘innan landz’, and so on),²³ there were only two legal spaces in which facts and acts could take place: ‘utan laga várra’ (‘outside our laws’) or ‘innan laga várra’ (‘within our laws’). Somebody who was geographically outside the ‘fylki’ could still be within its jurisdiction (‘innan laga varra’), as in *Gulapingslög* § 68:

If a thrall runs away and a man captures him within the fylki, but outside the fjórðungr, he must have an eyrir. And if he captures him outside the fylki, but within our law, he must have two aurar. Now if he takes him within the country, but outside our law, then he has half a mark. If he brings him home in bonds, he must have the owner’s fee – otherwise, nothing.²⁴

20 NgL I: 5 § 5.

21 I do not translate *hérað* as it has different meanings within the *Gulapingslög* as well as different meanings in Icelandic and Norwegian legal usage. In the *Gulapingslög*, *hérað* refers to a smaller area within the fylki, but it also denotes ‘the country’ as opposed to the *kaupangr* (‘trading place’), for example, in NgL I: 52–53 § 120.

22 NgL I: 53 § 120. There is no direct reference in the *Gulapingslög* to a court (þing) within the kaupangr. Another geographical division within the fylki was the áttungr (‘an eighth’) but there are no references to their having their own court (there are references to fjórðungsþing). It is difficult to discern in the extant text of the *Gulapingslög* a single consistent hierarchy involving all these smaller geographical units; it is possible that these smaller jurisdictions overlapped and may not all have existed at the same time.

23 NgL I: 32 § 59 ‘outside the fylki’, 26 § 46 ‘inside the fjórðungr’, 24 § 41 ‘inside the fylki’, 4 § 2 ‘inside the country’.

24 NgL I: 34–35. ‘Nu leypr þræll mannz. oc tæc maðr hann innan fylkis. oc utan fjórðongs. þa scal hann hava eyri. En ef hann tæc hann utan fylkis. oc innan laga varra. þa scal hann hava .ij. aura. Nu ef hann tæc hann innanlandz oc utan laga várra þa a sa halva morc er hann tæc. ef hann hever hann i hoftum heim. þa a hann undingia lausn. en ellar eigi.’ See also NgL I: 47 § 102.

It seems that jurisdiction, though defined by geography, was not too rigidly delimited, and law could reach beyond it. Despite that, ‘law’ has a marked spatial dimension in the laws of the *Gulaping*. Perhaps the clearest expression of ‘law’ in its spatial dimension is found in *Gulapingslög* § 5, in which *Gulapingslög* refers to the laws of the *Gulaping* and the ‘fylki’ within their jurisdiction: ‘Þat er nu því nest at ver scolom manne frælsi geva i fylki hveriu i Gulapings logum’ (‘Now the next is this, that we must give freedom to a man in every “fylki” in the *Gulapingslög*’).²⁵

Similarly, *Grágás-Konungsbók* § 118, which deals with inheritance rights, conveys the geographical/legal dimension in the phrase ‘í órum lögum’ (‘within our laws’):

The man who marries in some king’s realm other than the king of Norway’s and has a wife in this country, then the child he gets there has no rights to inherit here [Iceland]. If a man has two wives here in the country or within our laws, the penalty is lesser outlawry and if he gets children with the wife he took last, they are not lawful heirs.²⁶

Dennis, Foote, and Perkins suggest that Greenland may have been included in the definition of ‘within our laws’, as cases of killings and outlawry in Greenland could also be prosecuted in Iceland.²⁷ However, there were other crimes committed ‘erlendis’ (‘abroad’) that were prosecuted in Iceland to similar effects.²⁸

The key to understanding these provisions, it seems, is the conceptualization of law and jurisdiction which I have discussed earlier. *Grágás-Staðarhólsbók* § 59 contains the same provisions in *Grágás-Konungsbók* § 118 quoted earlier, but it also has other provisions that may explain the reasons why children born to a father whose second marriage was celebrated in Norway could be heirs in Iceland:

²⁵ NgL I: 5.

²⁶ *Grágás-Konungsbók* I: 226. ‘Sa maðr er hann quangaz i anars konvngs velde en inoregs konvngs oc a kono her. þa a þat barn eigi arf at taca er hann getr þa[r]. Ef maðr a konor ii. her a lande eþa iórom logom þat varðar fiorbavgs garð enda ero born þeirra eigi arfgeng ef hann elr við þeirre kono er hann tóć siðar.’ The manuscript has ‘þat’ (‘that, it’) instead of ‘þar’ (‘there’). In *Grágás-Konungsbók* I: 38 § 20, ‘í lögum vörum’ has a literal meaning: ‘þat eR mællt i logvm vorvm’ (‘it is prescribed in our laws’).

²⁷ *Grágás-Staðarhólsbók*: 389 §§ 373, 374.

²⁸ For example, *Grágás-Staðarhólsbók*: 386 § 369, 387 § 370, 388–89 § 372.

If a man marries in the realm of the king of Norway but has another wife here [Iceland], then the children he gets there have the right to inherit here if he marries by the right law. ... If a man has two wives here in the country or within our laws, then it is punishable with lesser outlawry and the children he gets with the wife he took last are not lawful heirs. ... The same applies if married men go abroad from here and take second wives in the realm of the king of Norway by the law of the land, then the children who are born there have the right to inherit here.²⁹

If a marriage took place in Iceland (or where Icelandic laws obtained), a second marriage could no longer be celebrated ‘according to the law’; indeed, a second marriage was punished with outlawry. A second marriage in Norway could have been done ‘at lögum réttum’ and ‘at lands lögum’ and therefore should be valid (‘mætr’) – the marriage has been perfected and can produce all its legal effect (the children born to this marriage, for example, will be heirs in Iceland). A marriage formally and lawfully celebrated guaranteed not only the rights of the heirs but the validity of the marriage itself. Though the former may also be the case in modern legislations, the latter may be regarded as excessive formalism as it could potentially perpetuate an unlawful situation (bigamy) – there is no mention of annulment of one of the marriages and/or punishment of the man.³⁰

In the Icelandic laws, though, the spatial dimension of ‘law’ is not as often expressed in terms of language as it is in the *Gulapingslög*. This is because – to use the terminology and geographical division of Norway found in the *Gulapingslög* – it was as if Iceland was one great ‘fylki’ divided into ‘fjórðungar’ containing smaller geographical/jurisdictional divisions; in this scheme, everybody in Iceland was ‘innan várra laga’. To be in Iceland was to be within the laws of Icelanders.³¹

29 *Grágás-Staðarhólsbók*: 70. ‘Ef maðr quangaz i noregs konungs velldi enda eigi hann aðra kono her. oc eigo þav born at taca arf hingat er hann getr þar ef hann quangaz at lögum réttum. ... Ef maðr a konor .ii. her a lande eða i várum lögum. þa varðar þat fiör baugs garð enda ero born þav eigi arfgeng er hann elr við þeirri kono er hann toc siðar. ... Sua er oc et sama ef quangapir menn fara utan heðan oc taca þeir aþrar konor i noregs konungs velldi at landz lögum. þa eigo þav born er þar alaz at taca arf ut hingat.’

30 Norway had a special space in Icelandic law. Events which took place in Norway could create, or guarantee, legal rights in Iceland; the most obvious cases involve marriage and inheritance, but Norwegians had other special rights in Iceland, and vice versa (Boulhosa 2005: 64–86).

31 The only exception seems to have been the slaves. A provision about the freeing of slaves states: ‘þa er manne frelse gefit at fullu er hann er i lög leiddr (“when a man is given full freedom he is led into the law»);’ *Grágás-Konungsbók* I: 192 § 112. A man whose mother tongue was not Norse could not take part in the legal system until he had been in Iceland for 3 years (*Grágás-Konungsbók* I: 38 § 20). This seems to have been only a question of procedure and the provision was not intended to exclude foreigners from the reach and protection of the law.

The evidence of both Norwegian and Icelandic laws points to some continuity in the conceptualization of law and jurisdiction, which were succinctly expressed by the phrases ‘our laws’ and ‘within our laws’. The spatial dimension of ‘law’ is marked, especially in the laws of the Gulaping. Space allows for a more concrete relation between man and law; in a legal culture not fully equipped with theoretical premises, space and the material culture around it allow for a better understanding of, and relation with, law. The weight given to witnesses and the evidence they provide stems from their capacity to relate directly and concretely with the space in which events take place. The concept of ‘véttvangr’ (‘place of action’) in the Icelandic laws is an expression of this.³² Although ‘véttvangr’ appears in the specific context of homicide and other crimes, all witnesses are bound to the space where a given legal event (inheritance, a selling, murder) takes place.

There are instructions to those who were appointed to act as judges that their decision should be circumscribed by the evidence. Thus, it is stated in *Gulapingslög* § 59: ‘Efter vitnum oc gognom skal hvért mal döma’ (‘Every case must be decided by the testimony of witnesses and evidence’).³³ In the Icelandic laws, the rules concerning evidence follow a more strict formalism.³⁴ *Grágás-Konungsbók* § 41, entitled ‘Vm domendr’ (‘On judges’), states that those who are appointed as judges should decide, according to the evidence, whether the case is valid or invalid:

They have to judge according to the evidence which has come before the court for prosecution and defence. They have to judge every case as either valid or invalid.³⁵

The emphasis on ‘validity’ (it is the worthiness of the evidence that is being evaluated) is in agreement with the formal aspect of the Icelandic legal system. In a legal culture of scarce written documentation and theoretical argumentation, the evidence produced by witnesses and panels, which is secured by oaths and other formalisms, was the premiss from which decisions were made by the courts. Witnesses were required to produce all evidence, and in certain cases witnesses were needed to witness the testimony given by other witnesses; they also testified that a legal decision or agreement had been reached – every legal procedure

³² *Grágás-Konungsbók* I: 145–48 § 86, 157 § 89, 165 §90, 184 § 108 and *Grágás-Staðarhólsbók*: 300–01 § 271, 307 § 277, 321 § 288, 353 § 322.

³³ *NgL* I: 31.

³⁴ On formal aspects of evidence, see, for example, *Grágás-Konungsbók* I: 54–55 § 31, 83 § 47, 143 § 85.

³⁵ *Grágás-Konungsbók*: 73 § 41 states: ‘Þeir eigo at döma eptir gognom þeim er þar hafa fram farit idom. þar til sócna oc til varna. Þeir eigo at döma soc hveria anattvegia mæta eða omæta.’

required witnesses to testify that it had taken place. The central role played by witnesses might have been an important factor in the development of Icelandic social structures in Iceland, where royal power and administration did not provide control. Men were required by law to take part in legal cases (in other words, in conflicts) involving people living in their proximity; neighbours were required to constitute panels; panels were required to give verdicts, and so on. In Iceland, law mediated social forces but was also a force in creating social power.³⁶

The Icelandic legal system did not rest solely on an empirical basis. There were principles which guided the way evidence should be weighted. *Grágás-Konungsbók* § 25 says that matters had to be brought before the court by prosecutors and defenders in the way known to be ‘*sanazt oc rettast oc hellzt at logvm*’ (‘truest and most right and most in accordance with law’).³⁷ And ‘*at logum*’ meant following the formal rules of procedure; as in the case of second marriage in the *Grágás-Staðarhólsbók* discussed earlier, this formalism was an important parameter for considering evidence, and cases could be lost if the right procedures were not observed.³⁸

The testimony of witnesses was at the centre of the legal systems described in the heterogeneous manuscripts of *Grágás*. Like the manuscript of the *Gulapingslög*, the *Grágás* manuscripts do not contain finished, complete, coded law but there is a striking consistency in the way evidence is understood and explained in them. With the introduction of the codified laws of King Magnus Hákonson, the testimony of witnesses remained the most important means of producing (and securing the faithfulness of) evidence, but the conceptualization of law becomes highly influenced by Christian thought. In the Icelandic *Jónsbók*, the law book accepted by the Alþingi c.1281, within a section entitled ‘*Doma capitule*’ (‘The Chapter on Judgments’), a provision on the evaluation of evidence states the following:

The court is appointed so that it must examine and evaluate cases and misdeeds and temper the decision after the circumstances of the case so that the assemblymen and Justice saw the most right before God – and they shall answer after their conscience; and it is not, as many a fool has responded, that they do nothing other than declare the law.³⁹

³⁶ Miller 1990: 20–21 and Boulhosa 2001: 99–100.

³⁷ *Grágás-Konungsbók* I: 46 § 25; the formula is also found in 79 § 46, 81 § 47, 85 § 49, 120 § 69, but see also II: 134 § 218 and *Grágás-Staðarhólsbók*: 79 § 64, 535 § 459. The penalty for bearing false witness at the *Alþingi* (General assembly) was full outlawry; *Grágás-Konungsbók* I: 47 § 25.

³⁸ *Grágás-Konungsbók* I: 83 § 47.

³⁹ *Jónsbók*: 62 § IV 17. ‘En þui er domrinn nefndr til. at þa skal rannsaka ok meta sakir ok misgerningar ok temprá sua dominn eftir maalaupxtum sem þing menn ok rettarinn sia rettligaz firir guði.

In fact, the last part of this provision may be read as an admonishment against the way law was conceptualized in the old laws, or against the wrong interpretation of these laws. The beginning of *Grágás-Konungsbók* § 41 stipulates that judges should give such judgements as they thought to be law:

It is also prescribed that before they begin their judging they must swear an oath unless they have already sworn. They must name witnesses – ‘I name them to witness that I swear an oath on the Cross, a lawful oath, and say before God that I shall give such judgement as I think to be law’.⁴⁰

The emphasis in *Jónsbók* is thus less empirical – evaluation and examination are ‘tempered’ by evidence so that those making decisions saw the most right before God and answered after their conscience. The emphasis in the ‘Dómakapítuli’ in *Jónsbók* is on the moderation of judgments as it evokes the help of the ‘four sisters’ – ‘miskunn ok sannendi, réttvísi ok friðsemi’ (‘Mercy and Truth, Justice and Peace’) – a reference to Psalm 44:11 of the *Vulgata* or the allegory of the ‘Four Daughters of God’ which was very popular in the Middle Ages.⁴¹

There have certainly been many changes in the Icelandic laws from the time of what *Íslendingabók* called the ‘laws of Úlfljótr’ to the time of the recording of the manuscripts of *Grágás*, but the greatest legal changes, those which modified core legal concepts, were made after the introduction of *Jónsbók*. For some Icelanders, *Jónsbók* might not have represented a radical legal change, as provisions from *Grágás* are to be found in *Jónsbók*,⁴² but others may have perceived the new laws in a different way; the tone of reproach in the passage of ‘Dómakapítuli’ mentioned earlier, for example, may point to tensions among those who were responsible in the making and recording of the new laws. If the passage in ‘Dómakapítuli’ was

ok þeir vilja suara eftir sinni samuizku. ok æigi sem margr snápr hefir svarat. at þeir dæma ekki annat en lög.’ The edition is based on manuscript AM 351 fol., dated to c.1360–1400. A version of ‘Dómakapítuli’ appears in King Magnús’s *Landslov* under the title of ‘Vm doma alla’ (‘On all judgments’) NgL II: 62–63. In both *Jónsbók* and *Landslov*, the section is recorded within a chapter entitled ‘Mannhelgi’ (‘Personal Rights’). ‘Domakapítuli’ is also recorded in AM 334 fol. as will be shown below.

40 *Grágás-Konungsbók* I: 72. ‘Þat er oc aðr þeir tace adomi sinom. at þeir scoló eið vīna aðr nema þeir hafe uninn aðr. þeir scoló nefna ser vatta. Nefni ec iþat vætti at ec vin eið at crossi lög eið. oc seg þat guði at ec mvn þan dom dōma sem ec hyg log vera.’

41 The allegory was founded on Psalm 44:11 and appears in Hugh St Victor and St Bernard de Clairvaux and, later in the twelfth century, in the pseudo-Bonaventure. See Traver 1907 & 1925 and Klinefelter 1953. The ‘Dómakapítuli’ also appears on the first folio of *Grágás-Staðarhólsbók* and seems also to have been included in *Járnsíða*; see Rohrbach forthcoming.

42 Lárusson 1922.

not a direct criticism of the old laws, if it was only intended to correct a misinterpretation of the old laws, it is still revealing that the new laws were chosen as the medium through which such correction was made.

In the context of the formulaic phrase ‘our laws’ with which I began, the opening to the second part of *Jónsbók* read thus:

It is the beginning of our laws of Icelanders, the beginning of all good things that must have and hold the Christian faith.⁴³

The same opening is found in the only medieval copy of what scholars believe is *Járnsíða* (AM 334 fol.), the law book which King Magnus Hákonsson sent to Iceland in 1271:

It is the beginning of our laws of Icelanders, the beginning of all good things that we must have and hold the Christian faith.⁴⁴

The old, formulaic phrase ‘our laws’ becomes ‘our laws of Icelanders’ at a time when Icelandic laws began to be issued by the King of Norway. The ‘our laws of Icelanders’ is the law of the ‘Dómakapítuli’. Indeed, in the manuscript in which *Járnsíða* is recorded, AM 334 fol., a version of ‘Dómakapítuli’ has been given great prominence and written down in the first page (1r) of the manuscript.⁴⁵ Only the first words of ‘Dómakapítuli’ have been recorded on folio 98v, and are marked by a large, red initial ‘E’, within the section entitled ‘Mannhelgi’ (‘Personal Rights’), that is, within the same section in which the ‘Dómakapítuli’ is found in *Jónsbók*.⁴⁶ Lena Rohrbach argues that the recording of ‘Dómakapítuli’ in such a way was an attempt to provide the laws with a theological-cum-juridical preface in the fashion of those found in the *Jyske lov* and *Mirror of the Saxons*.⁴⁷ The recording of

43 *Jónsbók*: 24 § II 1. ‘Þat er vpphaf laga vara islenndinga sem vpphaf er allra goðra hluta at wer skulum hafa ok halda kristiliga tru.’

44 ‘Þat er upphaf laga varra islendinga sem upphaf er allra goðra luta at vær skulom hava oc hallda kristelega tru.’

45 The text on folio 1r is not preceded by any title; I refer to it as ‘Dómakapítuli’ for convenience.

46 See footnote 39. The first words are ‘En af þuiat log bok vattar sua viða’ (‘And because the law book testifies in many places’). AM 334 fol., folio 98v.

47 Rohrbach, forthcoming. The ‘Dómakapítuli’ on folio 1r of AM 334 fol. has been dated to c.1300 and was thus written after the text of *Grágás* and *Járnsíða* recorded in the manuscript (Kålund I 1889–94: 275; Láruson 1936: 13). On the basis of her analysis of the manuscript mis-en-page and paratexts, Rohrbach proposes that the writing of ‘Dómakapítuli’ was contemporary to the writing of *Grágás* and *Járnsíða*.

‘Dómakapítuli’ on the first page of AM 334 fol. may be seen as another expression of the tensions which came up with the changes of important aspects of the conceptualization of law – at least, it seems that the scribes of AM 334 fol. might have felt this way.

Bibliography

- Benediktsson, Hreinn, *Early Icelandic Script: As Illustrated in Vernacular Texts from the Twelfth and Thirteenth Centuries*, Íslenzk handrit, 2, Reykjavík 1965
- Boulhosa, Patricia Pires, *Icelanders and the Kings of Norway: Mediaeval Sagas and Legal Texts*, Leiden 2005
- , Ideals and Aspirations: Democracy and Law-Making in Medieval Iceland, in *The Secret History of Democracy*, ed. Benjamin Isakhan & Stephen Stockwell, London 2011
- , The Laws on Tithe in the Manuscripts *Konungsbók* and *Staðarhólsbók* of Grágás, in Imsen, Steinar (ed.), ‘*Ecclesia Nidrosiensis*’ and ‘*Noregs veldi*’. *The role of the Church in the making of Norwegian domination in the Norse World*, Trondheim 2013
- Dennis, Andrew, Peter Foote & Richard Perkins (ed. & trans.), *Laws of Early Iceland: The Codex Regius of Grágás with Material from other manuscripts*, II, Winnipeg 2000
- Einarsson, Stefán, Terms of Direction in Old Icelandic, *The Journal of English and Germanic Philology* 43 (1944): 265–85.
- Grágás–Konungsbók = *Islændernes lovbog I fristatens tid udgivet efter det Kongelige biblioteks haandskrift*, ed. Vilhjálmur Finsen, I,II, Copenhagen 1850–1852
- Grágás–Staðarhólsbók = *Grágás efter det Arnamagnæanske Haandskrift nr. 334 fol: Staðarhólsbók*, ed. Vilhjálmur Finsen, Copenhagen 1879
- Grønlie, Siân (trans.), *Íslendingabók–Kristni saga*, London 2006
- Guta lag och Guta saga: Jämte ordbok*, ed. by Hugo Pipping, Copenhagen 1905–1907
- Hermannsson, Halldór (ed. & trans.), *The Book of the Icelanders*, Islandica, 30, Ithaca 1930
- Íslendingabók = Íslendingabók–Landnámabók*, ed. by Jakob Benediktsson, Íslenzk fornrit, 1, Reykjavík 1986: 1–28
- Jackson, Tatjana N., On the Old Norse System of Spatial Orientation, *Saga-Book*, 25 (1998–2001): 72–82
- Jóhannesson, Jón (ed.), *Íslendingabók Ara fróða*, Íslenzk handrit, 1, Reykjavík 1956

- Jónsbók: The Laws of Later Iceland*, ed. & trans. Jana K. Schulman, Saarbrücken 2010
- Kålund, Kristian (ed.), *Katalog over den Arnamagnæanske håndskriftsamling*, I,II, Copenhagen 1889–94
- Klinefelter, Ralph A., The Four Daughters of God: A New Version, *The Journal of English and Germanic Philology*, 52 (1953): 90–95
- Lárusson, Ólafur, *Grágás og lögbækurnar*, Reykjavík 1922
- , ‘Preface’, in *Staðarhólsbók: The Ancient Lawbooks ‘Grágás’ and ‘Járnsíða’ Ms no. 334 fol. in the Arna-Magnæan Collection in the University Library of Copenhagen*, Corpus Codicum Islandicorum Medii Ævi, 9, Copenhagen 1936
- Leonard, Stephen Pax, *Language, Society and Identity in Early Iceland*, Publications of the Philological Society, 45, Oxford 2012
- , Spatial References in Icelandic: The Issue of Identity, in *Proceedings of Lingö: The Oxford Postgraduate Linguistics Conference*, 2007, available online <<http://www.ling-phil.ox.ac.uk/events/lingo/proceedings.htm>>
- Lindal, Sigurður, Sendiför Úlfjóts, *Skírnir*, 143 (1969): 5–26
- Lindow, John, ‘Íslendingabók and Myth’, *Scandinavian Studies*, 69 (1997): 454–64
- , ‘The Social Semantics of Cardinal Direction in Medieval Scandinavia’, *The Mankind Quarterly*, 34 (1994): 209–224.
- Miller, William Ian, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland*, Chicago 1990
- NgL = Norges gamle love indtil 1387*, ed. by R. Keyser and others, I–V, Oslo 1846–95
- Norseng, Per, Law Codes as a Source for Nordic History in the Early Middle ages, *Scandinavian Journal of History*, 16 (1991): 137–66
- ONP = *Ordbog over det norrøne prosasprog: Registre*, ed by Den arnamagnæanske kommission, Copenhagen 1989
- Rohrbach, Lena, Matrix of the Law? A Material-Medial Study of *Staðarhólsbók*, in *Layout and Text Structure in Kongungbók», in The Power of the Book: Approaches to Medieval Nordic Legal Manuscripts*, Berlin, forthcoming.
- The First Grammatical Treatise*, ed. by Hreinn Benediktsson, Reykjavík 1972
- Traver, Hope, *The Four Daughters of God*, Philadelphia 1907
- , The Four Daughters of God: A Mirror of Changing Doctrine, *PMLA*, 40 (1925): 44–92

Chapter 10: Repositioning *Jónsbók*. Rearrangements of the law in fourteenth-century Iceland

Lena Rohrbach

Introduction

Of all the dependencies of the *Norgesveldet* (Realm of Norway or Norwegian Domination), Iceland is the only region which was granted its own law book. *Jónsbók* was ratified at the Icelandic General assembly (ON *Alþingi*) in 1281, being the second attempt of King Magnus Hákonsson the Lawmender (1263–80) to introduce a new law code to the Icelandic people after their submission under the Norwegian crown in 1262/64, after the failed introduction of the disliked *Járnsíða* 10 years earlier.¹ *Jónsbók* was soon accepted by the Icelanders and copied in a large number of exemplars. There are about 100 complete copies and about 40 fragments until the end of the sixteenth century.²

This substantial manuscript tradition shows that *Jónsbók* was obviously understood as applicable law in late medieval Iceland, but the question remains as to just how this law was perceived: was it perceived as discrete law of the Icelanders, as part of the law of the Norwegian realm and thus as royal law, or as part of the divine law in a wider salvation-historical context?³ The different possibilities are not necessarily mutually exclusive; on the contrary, within a medieval context, it is to be expected that all law is understood as being part of the global divine order. Nonetheless, I will in the following paragraphs argue that the Icelandic understanding of *Jónsbók* within a wider legal context was subject to diverging trends and significant changes over time. I will argue that these different perceptions manifest themselves in the way the law book is presented in the manuscripts. I will attempt to pursue these changing perceptions of the law by looking at the arrangement of *Jónsbók* in the manuscript tradition, and, more precisely, by studying not only the transmission of the text of the law book itself, but rather the codices transmitting this law code in their entirety.

1 Már Jónsson 2004: 16–17

2 Ibid: 26

3 As to notions of ‘our law’ or ‘Icelandic law’, see Boulhosa in this volume

Jónsbók is not a stable unit handed down unchanged from the time of its promulgation. Both the law text proper and the arrangement of the manuscripts that contain texts of *Jónsbók* undergo a number of changes with a significant accumulation in the middle of the fourteenth century. From the beginning of the transmission the individual manuscripts show minor differences as to the arrangement and naming of the sections (ON ‘bálkar’).⁴ More important and far-reaching changes regarding the arrangement of the law are the selection of texts transmitted in the manuscripts of *Jónsbók*, the inclusion of royal amendments in the law text, the creation of new texts in the form of digests of the law, and finally the material presentation, in terms of layout and illumination, and its relation to the contents of the codex.

There is one manuscript in the medieval transmission that shows a significant culmination of both textual and material innovations, which had a deep impact on the following manuscript transmission of *Jónsbók*, AM 350 fol., *Skarðsbók*. *Skarðsbók* is one of the very few Icelandic manuscripts that can be dated by means of a date given in the manuscript itself, to 1363.⁵ The main hand of *Skarðsbók* has been identified by Ólafur Halldórsson in nine other manuscripts, and he was able to connect this hand to the Augustinian monastery in Helgafell.⁶ Much has been written over the past decades on this manuscript which without doubt is one of the most, if not the most, splendid of all Icelandic legal manuscripts. *Skarðsbók* has been edited as facsimiles twice, in 1943 and 1981, accompanied by introductory articles on the origin, history, and contents of the codex.⁷ The past 10 years or so have shown a renewed interest in this remarkable manuscript. Individual studies of *Skarðsbók* have dealt with isolated aspects of this manuscript, such as the inclusion of amendments in the text of *Jónsbók* in this exemplar,⁸ the inclusion of encyclopaedic texts,⁹ and the interplay between illuminations and text in this codex.¹⁰

I will now discuss the peculiarities of this codex against the background of overall developments in the manuscript tradition of *Jónsbók* from the time of the promulgation of the law book until the end of the fifteenth century. I will argue

4 For an exemplary discussion, see Schulman 2010: xx–xxii

5 AM 350 fol. f. 149r. Jakob Benediktsson 1943: 6

6 Ólafur Halldórsson 1966.

7 Jakob Benediktsson 1943 and Jónas Kristjánsson 1981. Digital photographs of the complete manuscript are accessible on the web site <http://www.am.hi.is:8087/VefHandritalisti.aspx> (last access 15 February 2013).

8 Már Jónsson 2004

9 Schnall 2005a

10 Johansson and Liepe forthcoming

that *Skarðsbók* reflects a turning point in the perception of the law in the middle of the fourteenth century and that it has to be understood as a consciously executed project. This case study forms a first attempt to interpret a number of distinct changes in the Icelandic legal manuscript tradition from a holistic approach. I will interpret the developments in terms of what they might tell us about the medieval Icelandic understanding of the legal scope and authority of *Jónsbók* in its own right as well as in relation to the legal authority of the king of Norway.

Compiling the law: the contents of AM 350 fol.

AM 350 fol. marks a watershed in the Icelandic tradition of legal manuscripts when it comes to the inclusion of texts other than *Jónsbók*. The original part of the codex comprises folios 1–150 and features the following major parts.

1v–72r	<i>Jónsbók</i> (interpolated version)
72r–81r	Royal amendments
81r	Þessum málum má eigi appelera
81r–83r	Legal formulas
83r–90v	Saktal í <i>Jónsbók</i>
90v–107r	Hirðskrá
107v–121r	Kristinréttir [Árna biskups]
121r–147r	Ecclesiastical statutes and agreements
147r–147v	Saktal hins forna kristin réttis
147v–148r	Ecclesiastical statutes
148r–149r	Encyclopaedic texts
149r–150v	Ecclesiastical statutes
150v	Excerpt from the Bible (Luke 11, 27–28)

In his introductory chapter on the law codes of *Skarðsbók* in the 1981 facsimile edition, Sigurður Línal stated: ‘Whoever commissioned *Skarðsbók* evidently meant to bring together in a single volume all written legal material of practical

significance for an Icelander of the mid-fourteenth century, or, more precisely, of 1363, when the book was being made.’¹¹ And indeed, *Skarðsbók* is quite close to being all-encompassing in its inclusion of legal texts in force in fourteenth-century Iceland, but there is more to it than a mere collection of effective law and also more to it than sheer practical considerations. A closer study of the collection and formation of texts in this codex discloses a specific impetus behind the arrangement of the manuscript.

The overview of the contents of *Skarðsbók* shows that the manuscript contains texts to be expected in a medieval Icelandic law codex, such as a large number of royal amendments attached to the law text (ff. 72r–81r), legal formulas (ff. 81r–83r), *Kristinréttir* [*Árna biskups*]¹² (ff. 107v–121r), and a compilation of ecclesiastical statutes (ff. 121r–147r, 147v–148r, and 149r–150v). A closer look at these sections and the remaining parts of the manuscript reveals that *Skarðsbók* contains text-witnesses of several texts of central importance to contemporary Icelandic and Norwegian politics that have not been transmitted in earlier manuscripts or even no other medieval manuscript at all. I will present the individual texts in detail, following the arrangement in the manuscript, before discussing potential interests behind the compilation of these texts together with *Jónsbók*. The text of *Jónsbók* proper and of three digests of legal texts included in *Skarðsbók* will be discussed in separate sections.

Skarðsbók is the oldest Icelandic manuscript that contains the general amendment of King Eirík Magnusson (1280–99) of 1280 (ff. 72v–73v), in fact even in two versions which form at the same time an abbreviation and an amendment of the original. The two versions both deal with a variety of topics reaching from the duties of the local officials to regulations regarding inheritance and have been copied in a large number of Icelandic legal manuscripts subsequently.¹³

Skarðsbók is also the oldest Icelandic text-witness of King Hákon Magnusson’s (1299–1319) amendment concerning the partiality of the judges of 1309 (ff. 75r–75v).¹⁴ The opening of the amendment reads:

11 Sigurður Línal 1981: 52

12 The Church law is not ascribed to bishop Árni with a single word in this manuscript. The rubric introducing the Church law in AM 350 fol. reads: ‘hér byriar upp hinn nýia cristins domz rett þann er herra ion erchibiskup saman setti ok logtekinn er vm skalholt biskupsdæmi.’ (AM 350 fol. f. 107v. ‘Here begins the new Church Law, which archbishop Jón made and which has been accepted as law in the diocese of Skálholt.’ All translations in this article by the author.) See Már Jónsson, Haraldur Bernharðsson, and Magnús Lyngdal Magnússon 2005: 30.

13 DI II: 200–06

14 DI II: 367–68

Many men have turned to us about that opinion that the lawman renders among men and the judges that have been appointed, that no right is conceded even though cases have been brought before the sheriffs or their agents, unless they receive gifts. And because it does not beseem us in any way to tolerate such things, we want every man to know that he who has been sentenced for a case, should turn to our sheriffs or their lensmen and ask to let justice prevail.¹⁵

This text is followed by the oldest Icelandic text-witness of King Hákon Magnusson's amendment on debts of hirdmen of 1303 (f. 75v),¹⁶ in which the king admonishes his retainers to pay their debts, failing which they will be excluded from the royal hird. Other first-time text-witnesses in an Icelandic context are King Hákon Magnusson's amendment regarding the effectiveness of the old Church law of 1316 (f. 76r)¹⁷ and his amendment concerning threats directed at royal officials of 1303 (ff. 76v–77r).¹⁸

Skarðsbók is furthermore the only medieval *Jónsbók* manuscript transmitting King Hákon Magnusson's amendment of 1318 on unrighteous behaviour of the lensman (ON 'lénsmadr') (ff. 77r–78r).¹⁹ This amendment contains a rebuke of unjust and unlawful demeanour of lensmen and at the same time an admonition directed at the sheriff (ON 'sýslumaðr') to not ignore such unlawful behaviour:

It seems to us that our sheriffs themselves have been hit by forgetfulness, where it is obvious that the lensman has dared to do something like this, as they get to know quickly about penalties of interest in their districts, even though they are small, but do not seem to know of such wickedness of their lensmen. It beseems us to be attentive that the forgetfulness of the sheriffs and the wickedness of the lensmen do not bring dishonor to us and harm to innocent men.²⁰

15 AM 350 fol. f. 75r–75v. 'Margir menn hafa kiert fyrir oss um þann orskurð sem lögmaðr segir manna í millum. ok dómar þeir sem dæmdir ero. at engin retrr geriz á. þo at kiert se fyrir syslu monnum. edr þeirra umbodsmonnum. utan þeim se gjafir gefnar. Ok af þui at oss byriar þilika luti med ongu moti þolaz lata. þa uilium uer at allir menn uiti at þar sem sá er malit uardar ok log skilat er. edr dæmdr er domr til handa. kierir sik fyrir uarum syslu monnum. edr þeirra léns monnum. ok bidja ser rett göra.'

16 DI II: 339

17 DI II: 404–05

18 DI II: 336–37

19 The amendment is transmitted in many post-medieval Icelandic manuscripts (DI II: 415). As to the different, somewhat unclear notions of *lénsmadr*, see Wærdahl 2011: 255–56. In this context, the lensman is subordinate to the sheriff (as to this notion in the Icelandic context, see Helgi Þorláksson 2011: 112).

20 AM 350 fol. f. 77v. 'syniz oss sem þar hafi til gengit gleymaska sialfra syslu manna vara. sem augliost

The collection of amendments is closed by a number of amendments of a more recent date, from the reign of King Magnus Erikson (1319–74), again first-time text-witnesses in an Icelandic context, such as his amendment on the relation between laymen and clergy and royal and ecclesiastical jurisdictional authority of 1353 that includes an amendment of King Håkon V Magnusson of 1309 (ff.78v–79v), which has not been transmitted in older Icelandic manuscripts.²¹ One of the last passages of the amendment reads:

When a provost has a legal case against a farmer, then they are obliged to do justice to them. And if it becomes obvious that they behave wrongly towards our subjects and they do not want to give in to their [the lawman's and sheriff's] persuasions in any way, rather they throng the farmers with excommunication or other burdens to comply with their claims, this is unwelcome to us, that he meets justice who does not want to grant it to others. The lawman or sheriff shall tell the provosts or their agents that they will not grant justice to them unless they grant justice to other men. Now if the lawmen or sheriffs are guilty of this, that they do not want to let justice prevail to the king's subjects, then they ought to know verily, that they shall loose the friendship of the king and easily the office as well.²²

Other recent amendments are King Magnus Eriksson's amendment on usury and false tithe paying of 1353 (f. 80r),²³ transmitted for the first time in AM 350 fol. and AM 351 fol., *Skálholtsbók eldri*, dated to c.1360–1400,²⁴ his amendment on the collection of debts and royal revenues (skatt) of the Icelanders by Norwegian

er at lens menn dirfaz slikt at gera. þar sem þeir spyria skíott ef nokkurar sektir falla til með hondum í þeirra systlum. alldri ero sua litlar. enn slíka illzku sína léns manna lataz þeir æigi uita. þui berr oss um at hugsu. at gleymaska systlu manna edr illzka lens manna uerði oss æigi til ofrægdar. enn saklausum monnum til skada.'

21 The merged amendment is edited in Már Jónsson 2004: 266–68.

22 AM 350 fol. f. 79v. 'hefir ok profastr rettar sakir a bondum. þa skulo þeir skylldir til at gera þeim rett. Enn ef sua syniz at þeir gangi rangliga a þegna uára. ok þeir uili með ǫngu moti hlita a þeirra fortǫlum. helldr at þeir þrǫngua bondum með bani edr odrum þyngslum at ganga undir þeirra alogur. þa er os þat oliuft. at sa móti rettinda. er odrum uill ecki rett una. Skal þa lǫgmaðr edr systlu maðr segia profostum edr þeirra umbodsmonnum. at þeir munu engi rettindi gera þeim nema þeir se rettir uid adra menn. Nú ef logmenn edr systlu menn uerda at þi sanir. at þeir uilia æigi hallda konungs þegna til rettinda. þa uiti sanliga. at þeir skulo missa konungs uinattu ok þo lettliga þeonustunar með.'

23 DI III: 72–73

24 Degnbol 1989: 294. All datings in this article are according to the Ordbog over det norrøne prosasprog (Degnbol 1989, hereinafter ONP), unless otherwise stated

merchants (f. 80v),²⁵ and his amendment on the administrative and jurisdictional organisation of districts in Iceland of 1342 (ff. 80v–81r).²⁶

The royal amendments are followed by a collocation of shorter texts of different nature, among them a collection of oaths and other legal formulas, and two digests of the law that will be discussed later. These texts are followed by *Hirðskrá* (ff. 90v–107r). *Skarðsbók* is one of four Icelandic medieval exemplars of the complete Norwegian law of the royal retinue (hird, ON ‘hirð’).²⁷ The Icelandic transmission of *Hirðskrá* commences in the middle of the fourteenth century. This has in earlier studies been interpreted against the background of changed social structures in medieval Icelandic society at that time, with a growing number of knights and hirdmen (ON ‘hirdmenn’) in the Icelandic elite.²⁸ The text of *Hirðskrá* in *Skarðsbók* is unique as it is the only manuscript that has a statute (ON ‘skipan’) from the time of King Hákon VI Magnusson (1340–80) attached in the end.²⁹ The ‘skipan’ (f. 107r) deals with the appropriation of provostships by hirdmen and states that they are to be excluded from the hird if they abuse this office by means of summoning the king’s subjects before the bishop in secular matters. If a cleric in the office of provost on the other hand breaks the law against a king’s subject, the latter must not act on his own behalf, but is subordinate to the jurisdiction of the king, the royal judge (lawman, ON ‘lögmaðr’), or the governor (ON ‘hirdstjóri’).³⁰ Apart from this

25 DI II: 787–88. On this amendment and the question as to whether it ever was accepted as effective law by the Icelanders, see Helgi Þorláksson 2010: 160, 167. For the dating of the amendment in the period 1330–60, see Már Jónsson 2004: 270.

26 DI II: 764–66

27 The other manuscripts are GKS 3270 4to (c. 1350), AM 126 4to (c. 1400), and Holm perg. 34 4to (c. 1370), the latter one not being a manuscript of *Jónsbók*, but rather a later collection of both Norwegian and Icelandic origin, featuring amongst others the Norwegian *Landslov* (Storm 1885: 667–68). There are more *Jónsbók* manuscripts transmitting fragments of *Hirðskrá*. See Imsen 2000: 18–19

28 Imsen 2000: 19 and Sigurður Línal 1981: 61. As to the establishment of an Icelandic aristocratic elite in the first decades of the fourteenth century, see also Helgi Þorláksson 2012: 78

29 Imsen 2000: 15–16

30 The skipan reads: ‘Sua skipadi uirduligr herra hakon noregs konungr. son magnus konungs at ef hirdmenn eðr handgengnir menn taka profast dæmi af lærðum monnum. ok stefna konungs þegnum þar fyrir til biskups. um veraldligir fesektir. þa ero þeir sialfsagdir af konungsþeonostu. ok se skildir uið profast dæmi. Enn huerr muga maðr er þat gorir. heðan af skal suara uiij örtogum ok xiiij morkum konungi. ok se skildir uið profast dæmi. Enn ef lærdir menn þeir sem profast dæmi hafa brióta lög a konungs þegnum eðr þrøngua þeim með saksoknum eðr saka giptum. edr gera þeim anan þunga frammar enn forn lög ok cristinna laga retter uattar. sa sem samþycktr er milli konungs ok erchibiskups. ok þegnarnir hafa sidan halldit. þa fyrir baud hann þegnum, þeim þar til at suara. edr undir ganga. fyrr enn huaratuegiu mála efni koma fyrir konung edr fyrir lögman. edr hirdstiora.’ (AM 350 fol. f. 107r. ‘Our noble lord Hákon, King of Norway, son of King Magnus, ordained that if hirdmen appropriate a provostship from learned men and summon the king’s subjects before the

amendment, *Hirðskrá* does not deal with the relation between ecclesiastical and secular authorities. The *skipan* takes up the separation of ecclesiastical and secular jurisdictional authority as formulated in the settlement of Tønsberg in 1277, but unlike the settlement it substantiates this separation by stressing the limits of ecclesiastical jurisdiction and by placing the royal jurisdiction as supreme authority in the case of violations.

In fact, *Skarðsbók* is again together with AM 351 fol. one of the earliest copies of the Old Norse text of the settlement (ON ‘sættargerð’) of Tønsberg 1277,³¹ originally issued in Latin, in the middle of a number of ecclesiastical decrees attached to *Kristinréttir* (ff. 122r–125v). This settlement between King Magnus Hákonsson the Lawmender and archbishop Jon Raude is a document of central importance to the balance between the secular and the ecclesiastical judicial powers and can be understood as a direct reaction to King Magnus’ efforts in secular legislation in the preceding years. The agreement guarantees jurisdictional authority and autonomy for the church and marks a peak of ecclesiastical power.

AM 350 fol. and AM 351 fol. are also the only two manuscripts, both of Icelandic and of Norwegian provenance, predating the end of the fifteenth century that contain versions of archbishop Eilif Korte Arnason’s statute of 1327 on different issues relating to ecclesiastical law (ff. 130v–132v).³² After an introduction which places the demeanour of man within the course of salvation history, the first part of the statute consists of a long admonition with references to Canon law and is directed at laymen to not interfere in ecclesiastical matters. This statute represents the ecclesiastical obverse of the royal *skipan* in *Hirðskrá*. It reads amongst others thus:

The impudent foolhardiness of some officials, sheriffs or other judges, has grown so much that at the places which they control, they hinder or forbid that cases that by law or old custom belong to ecclesiastical jurisdiction are judged by judges of the church, with the result that they are rather judged by laymen or stay void of right

bishop for secular penalties, then they are as a matter of course out of the king’s service and are to be separated from the provostship. And every common man who does so has to pay eight ertogs and thirteen marks to the king and is to be separated from the provostship. And if learned men who own a provostship break the law against the king’s subjects or throng them with lawsuits or charges or encumber them with more than the old law and the Christian law affirm, the one that has been agreed upon between king and archbishop and that the subjects have held since, then he forbade the subjects to answer for themselves or to undertake anything before both positions have been brought forward to the king or the lawman or the governor.’)

31 DI II: 147

32 DI II: 623–29

or without any judgment. Now because we do not want to disregard our rights and the rights of our bride the Holy Church, we ordain and forbid that someone hinder for himself or somebody else that these cases that belong to the church are judged by judges of the church.³³

Our manuscript also features excerpts of the *Summa de casibus poenitentialibus* by Reymundus de Penna forti (ff. 141v–142r) and excerpts concerning excommunication from the writings of Godefridus Vindocinensis (f. 142r). These two Icelandic translations of learned treatises are placed directly after regulations concerning excommunication (ff. 141r–141v) which are usually ascribed to Bishop Árni. The translation and extrapolation of these two texts have also been attributed to Bishop Árni himself, and it has been argued that the three texts were compiled together by him. However, the two texts are transmitted in considerably fewer manuscripts than the regulations themselves, again AM 350 fol. and AM 351 fol. being the oldest text-witnesses.³⁴

The manuscript finally also contains the first witness of the settlement of Avalsnes in 1297 between King Eirik Magnusson and Bishop Árni (f. 148r), which formed the end of the so-called Staðamál, the conflict between laymen and the Church about the ownership of the larger church estates (ON ‘staðir’). There are many other manuscripts that transmit this agreement, none of which predates the end of the fifteenth century.³⁵ This settlement stresses again the autonomy of the church and strengthens its position as opposed to royal authority.

There are, of course, other amendments, agreements, and statutes included in the collection of *Skarðsbók* which are transmitted in older manuscripts as well. The transmission of amendments and ecclesiastical statutes, some of which were never intended for Iceland, in Icelandic legal manuscripts sets in in the first decades of the fourteenth century.³⁶ But of all the manuscripts handed down to us, *Skarðsbók* is by all means the most encompassing in its inclusion of royal amendments and ecclesiastical statutes, only accompanied by AM 351 fol., *Skálholtsbók eldri*, as an

33 AM 350 fol. f. 131v–132r: ‘diorfungar full ofdirfd nockurra iustisa. syslu mannaedr anara domara vex sua miok. at i þeim stöðum sem þeir hafa valld yfir. talma þeir edr fyrir boda. at þau mál. sem af lögunum edr af fornri sidueniu. kirkiuligum domi til heyra. dömiz fyrir kirkiunar domarum til þess at þeir renni þui helldr undir leikmanna dom. edr þeirra mál nidr falli rettlous edr udæmd. Nu af þui at uer uiliu ægi uanrækia uár rettindi. ok varar brudar heilagrar kirkiu. skipum uer ok fyrirbiodum at nockurr talmi fyrir sik edr anan. at þau mal sem til heyra kirkiuni se dæmd fyrir kirkiunnar domarum.’

34 DI II: 212 and 216–18

35 DI II: 323–24

36 Strauch 2011: 257

early witness of many ecclesiastical statutes. It is noteworthy that these two manuscripts even take up very recent diplomas such as Bishop Gyrðr Ívarsson's statute of 1359 (f. 144v–145r),³⁷ which indicates that the men behind these two manuscripts had a full overview over the legal documents effective in Iceland and mainland Norway at that time. Furthermore, the inclusion of very recent documents as well as of first-time witnesses of Old Norse translations of documents and learned treatises originally issued in Latin points towards a learned background of the scribes of *Skarðsbók* and *Skálholtsbók eldri*. AM 351 fol. is indeed thought to have been written at the bishop's see of Skálholt, under the supervision of the officialis Snorri Þorleifsson,³⁸ whereas *Skarðsbók* has been connected to the monastery of Helgafell, as previously mentioned.

However, the selection and collocation of material point towards an impetus that reaches beyond a learned engagement with contemporary legal texts. Most of the texts presented earlier were not issued specifically for Iceland, but were taken up in and made part of the Icelandic legal tradition, with *Skarðsbók* being a palpable initial moment. The collection of amendments and statutes in this codex shows a preoccupation with duties and rights of the local officials, but also with the relation between secular and ecclesiastical authorities, amongst others, as emerges from the earlier quotations. The royal amendments demand that district judges, sheriffs, and lawmen, but also clerics, observe a moral code and exercise moderation in the exercise of their offices while at the same time underlining that they are subordinate to the king's authority in secular matters. On the other hand, several amendments, the settlements of Tønsberg in 1277 and Avaldsnes in 1297, and the ecclesiastical statutes confine the power of the king and his officials to secular affairs and establish the church as independent authority.

The impressive collection of first-time witnesses of legal texts is brought to a close by a number of encyclopaedic texts on folios 148r–149r that at first sight seem to be foreign matter in a legal codex, such as a brief text on the seven ages of the world (*vm heims alldra*, f. 148v) or another on the miracles of Judgment Day (*Doma dags undr*, f. 149r), and a quotation of Luke 11, 27–28 on f. 150v. Eike Schnall analysed the inclusion of encyclopaedic texts in Icelandic legal manuscripts with special emphasis on a brief text on the *Dies Mali*, the dismal or evil days, AM 350 fol. again being the first text-witness in an Old Norse–Icelandic context (*um dismala daga*, ff. 148r–148v).³⁹ Schnall showed convincingly that

³⁷ DI III: 128–30

³⁸ Schulman 2010: xix

³⁹ Schnall 2005a: 361, 372

the insertion of these texts in *Skarðsbók* and related manuscripts places the local secular law within a holistic Christian cosmological framework.⁴⁰ Karl Gunnar Johansson and Lena Liepe attributed a similar function to the excerpt of the gospel of Luke.⁴¹ This closure adds another dimension to the arrangement of local Icelandic law as embedded in the secular legislation of the Norwegian crown and the ecclesiastical legislation of the archdiocese in Nidaros, by presenting it as an element of the salvation-historical course of time, representing one tiny step in the history of the world.

Cohering the law: *Jónsbók* and the amendments

AM 350 fol. is not only a pioneer in its collocation of first-time text-witnesses in Icelandic legal codices, but is also one of the oldest manuscripts to feature a new text of the law book proper, which came to be the prevailing version in the following transmission of *Jónsbók*. As discussed by Már Jónsson in his edition of *Jónsbók* in 2004, there are three amendments of a comprehensive nature, issued in the years 1294, 1305, and 1314, listing in total 88 changes in *Jónsbók* that were inserted subsequently in the text of the law book itself.⁴² None of the other amendments circulating in Icelandic legal manuscripts was at any point included into the text of the law book, partially because they were of a more general nature, not related to individual provisions or exceeding the contents of *Jónsbók*, and partially probably also because they were not originally issued as Icelandic law, as previously discussed. The text of the first of the three amendments after the opening formula in the wording of GKS 3270 4to, dated to c.1350,⁴³ reads thus:

The lawman Þorlákr Narfason came to us and presented your request to include or omit some items in your book [i.e. *Jónsbók*]. He also showed us the items that he requested on your behalf and that did not seem to him and other good men who were present at our court to be useful to you, and although you are afar we wish to take care of your needs as much as of those subjects closer to us, regarding the items

40 Schnall 2005a: 370–71

41 Johansson and Liepe forthcoming

42 For a more detailed presentation of these amendments, see Már Jónsson 2004: 18–19. The texts of the three amendments have been published in DI II: 282–88, 342–45, 390–95 and Már Jónsson 2004: 309–19.

43 Már Jónsson sees GKS 3270 4to together with GKS 3268 4to as the oldest exemplars of one main branch of the textual tradition of *Jónsbók* (Már Jónsson 2001: 377).

that we can see are requested with reason, we announce to you that we consent to all of your requests that are listed in the following.⁴⁴

These sentences are significant for the present context for several reasons. First, the opening remarks of the amendment convey that King Eirik Magnusson was anxious to claim that the far-off Icelanders were granted the same attention and diligence as his subjects in the mainland received. This is of great interest as it explicitly takes up the idea of a community of law governed by the royal lawgiver. It is the king himself who stresses his legal authority and his duty to take care of the needs of his subjects in the different, and even in the most remote, parts of *Norgesveldet*.

Second, these remarks indicate that the listed provisions were meant to complement or replace existing clauses in the law book. However, in the first period after the issuing of these amendments, they were put in the end of *Jónsbók*. Twelve manuscripts of *Jónsbók*, including the above-quoted GKS 3270 4to, date from before the mid fourteenth century. Not all of them contain the three amendments, but those that do put them at the end, just after the law itself. Már Jónsson was able to point out that these oldest manuscripts also contain a number of sporadic interpolations of the three amendments in the text of *Jónsbók*, although in a very inconsistent way.⁴⁵ From the middle of the fourteenth century, we find that the amendments suddenly are included into the law text itself in a more comprehensive and coherent way. The 88 provisions listed in the three amendments were inserted at their proper place in the law text and the repealed clauses were omitted. The new version quickly became the prevailing text of *Jónsbók*. The great majority of manuscripts from the fifteenth and sixteenth centuries are fully interpolated in this way.

According to Ólafur Halldórsson, all interpolated manuscripts descend either from AM 343 fol., *Svalbarðsbók*, the oldest manuscript featuring the interpolated version, dated to 1330–40,⁴⁶ or from AM 350 fol., *Skarðsbók*.⁴⁷ These two manu-

44 GKS 3270 4to f. 102r–102v. ‘Þorlákur narfa son lögmaðr kom til var ok tæði oss bænar stað yðvarn vm nokkurra luti þa sem þer beidduz at til skyldi legiaz bokar yðvarar eða or takaz. Sva syndi hann oss ok þa luti sem hann beiddiz af yðvari halfu ok honum ok þeim fleirum goðum monnum sem þa voru j hia os þikkia yðr harðla nyttsamligir vera. ok af þi at ver vilium iafngiarna sia yðra nauðsyn þo at þér seeð i fiarka vm þa luti sem <vér> siám at þér beiðiz skynsamliga sem þeirra þegna vára sem næri os eru. þa gerum vér yðr kunnigt at vér samðykkium þessar yðrar beizlur allar sem her fylgia.’

45 Már Jónsson 2004: 19–20

46 Már Jónsson 2004: 21 refers to a slightly younger dating of the manuscript to the middle of the fourteenth century in an unpublished study by Karl Óskar Ólafsson.

47 Ólafur Halldórsson 1904: XXXI. The textual relationship between the numerous manuscripts of *Jónsbók* is however very intricate. It proves difficult to establish the lineage between individual manuscripts, and there are hardly any direct copies to be found. Már Jónsson 2001: 377, 381–82

scripts are the only complete text-witnesses of the interpolated version of *Jónsbók* clearly predating 1400.⁴⁸ Albeit a number of smaller differences, the similarities between the two manuscripts in the inclusion of the amendments are so many and stretching over the whole law book that Már Jónsson very convincingly came to the conclusion that the interpolated version of *Jónsbók* in AM 350 fol. is a copy or rather an improved version of AM 343 fol.⁴⁹ Thus, all text-witnesses of the interpolated version eventually go back to AM 343 fol., to a greater or lesser extent.

These far-reaching congruities between all text-witnesses of the interpolated version indicate that the comprehensive interpolation was not the result of a continuous process of independent interpolations over a longer period of time, but the achievement of a single person or group in the middle of the fourteenth century, manifesting in AM 343 fol. The complexity of the matter points towards a person familiar with the contents of the law.⁵⁰ The reasons for this project might have been to reduce legal confusion that resulted over the decades due to the coexistence of the original provisions in *Jónsbók* and the separately transmitted amendments, as suggested by Már Jónsson.⁵¹ It is, however, striking that the interpolation was executed only several decades after the last of the three amendments was issued, and that the new version of the law text is palpable at the same time and in the same context as the inclusion of amendments not originally intended for Iceland. The moment at which the concerted interpolation and the inclusion of a large number of amendments can be traced in the manuscript tradition correlates with a significant growth of text-witnesses of pragmatic literacy in general in the same period.⁵² This correlation suggests a grown preoccupation with the written law text and awareness of the benefits of the written medium that induced the enterprise.

At any rate, the interpolated version displays *Jónsbók* and the three amendments as one coherent law text. The man behind *Skarðsbók* was well informed

48 Sigurður Línal 1981: 58. Ólafur Halldórsson 1904: XXXI also mentions AM 354 fol., AM 126 4to, AM 139 4to, and AM 156 4to, all more or less direct copies of either AM 343 fol. or AM 350 fol. within the group of interpolated manuscripts predating 1400. ONP dates the text of *Jónsbók* in AM 354 fol., AM 126 4to, and AM 139 4to to c.1400, and thus several decades later than AM 343 fol. and AM 350 fol., AM 156 4to is dated to c.1350–75, but does not contain the complete text of *Jónsbók*.

49 Már Jónsson points out that the scribe of *Skarðsbók* must have used several exemplars in the creation of his text; however, AM 343 fol. seems to have been the main source. Már Jónsson 2004: 22. See also Jakob Benediktsson 1943: 17

50 Ólafur Halldórsson 1904: XXX

51 Már Jónsson 2004: 22

52 Rohrbach forthcoming

about these recent developments in the textual tradition of *Jónsbók* and decided to include this new, interpolated version of the law book in his manuscript, rather than the original version.

Recreating the law: New textual arrangements

This expertise in the legal tradition is also reflected in three other texts in the compilation. The amendments are followed by one of the oldest text-witnesses of *Bessum málum má eigi appellera* (hereinafter *Bessum málum*), a list of cases that cannot be appealed (f. 81r),⁵³ and also one of the oldest text-witnesses of *Saktal í Jónsbók*, a digest of penalties in *Jónsbók* (ff. 83r–90v).⁵⁴ *Skarðsbók* is furthermore to my knowledge the only manuscript that contains a brief, to this point unedited, text entitled *Saktal hins forna cristins retz*,⁵⁵ which is a list of cases in the Christian laws section of *Grágás*, to be found in the collection of ecclesiastical statutes (ff. 147r–147v). These three texts represent a significant innovation in the medieval Icelandic legal manuscript tradition, coinciding with contemporary developments in the legal tradition on the continent.

The selection and arrangement of provisions in these three texts point towards a high awareness of the legal, but also political, scope of the law. *Saktal í Jónsbók* is a comprehensive list of penalties mentioned in *Jónsbók*.⁵⁶ It follows the order of the law book and quotes the section and article (ON ‘kapítuli’) of the law book explicitly before listing the individual provisions.⁵⁷ The list primarily includes monetary penalties, and other types of provisions are occasionally included. The layout of *Saktal í Jónsbók* follows the overall layout of the manuscript. The indications of new sections and articles are rubricated.

In AM 350 fol. *Saktal í Jónsbók* is introduced by the following words⁵⁸:

53 Other text-witnesses predating 1400 are AM 347 fol. (c.1350), AM 351 fol., AM 344 fol. (c.1375–1400), and AM 158 a 4to (c.1400)

54 Other text-witnesses predating 1400 are AM 135 4to (c.1350) and AM 48 8vo (1375–1400). See Már Jónsson 2004: 32

55 Jakob Benediktsson 1943: 14 and Jónas Kristjánsson 1981: 66

56 Jakob Benediktsson 1943: 17 points out that the name *Jónsbók* for the Icelandic law book appears for the first time in this rubric in *Skarðsbók*. Also in this rather superficial respect, *Skarðsbók* seems to mirror very recent trends.

57 *Saktal í Jónsbók* has been edited for the first time, in a normalised version following the text of AM 350 fol., by Már Jónsson 2004: 276–92. A critical edition taking into account all text-witnesses is pending.

58 This introduction is not to be found in all witnesses of *Saktal í Jónsbók*, see for instance AM 175c 4to f. 1r.

He who wishes to handle quickly and read through specific penalties that are written down in the Icelandic common law that the honorable King Magnus [...] son of King Hakon, made and ordained [...] then, he who deems it more convenient than in the book itself, can read through here, to search for specific procedures, where to find what.⁵⁹

This prologue and the lucid textual and material arrangement of the digest support the idea that *Saktal í Jónsbók* was intended as a finding aid, as a convenient digest for specific procedures in the bulky law book. The references to the articles allow us to go back to the text of *Jónsbók* in order to read the complete provision. However, not all specifications correspond with the actual order in *Jónsbók*, at least not according to the text of *Skarðsbók*.⁶⁰ Later copies of *Saktal í Jónsbók* have a changed arrangement; they do not follow the order of *Jónsbók*, but rather sort the provisions by penalties.⁶¹ This must have been of special interest for those entitled to collect penalties. One can imagine that both versions might serve to answer a pragmatic need, being convenient for judges and other members of the political elite to have at hand,⁶² and the insertion of this text supports the idea that *Skarðsbók* was meant as a convenient, all-encompassing handbook for men involved in the administration of the country.

The disposition of *Bessum málum* also suggests a pragmatic motivation behind the collocation. The text claims to list all cases that one cannot appeal, without giving any information about which legal text this list is referring to.⁶³ The location of the text in the manuscript, attached directly to the last amendment and followed by a list of oaths, supports the impression that this text relates to provisions in *Jónsbók*, but a closer look reveals that we are dealing with foreign matter, and not local law. The verb ‘appellera’ is elsewhere only used in translations of Latin

59 AM 350 fol. f. 83r. ‘Sa er með skiotri grein uill hōndla ok yfir lesa sér hueriar sektir. þær sem skrifaðar ero i islendzkri landz lagabok þeirri er uirduligr herra magnus konungr [...] son hakonar konungs saman setti ok skipaði [...] þa ma hér yfir lesa. sa er þat syniz sér hentara enn i sealfri bokini. eptir sér hueriu sakferli at leita. huar er huert stendr.’

60 Már Jónsson 2004: 32

61 Már Jónsson 2004: 32. This later arrangement resembles the arrangement of a brief enumeration of the number of cases for the different types of monetary penalties in *Jónsbók*, *Sektir Jónsbókar*, which also appears in the manuscript tradition for the first time in the middle of the fourteenth century, in AM 135 4to, *Arnarbælisbók*. See Jacobsen 1990.

62 This finding is not as self-evident as it might seem at first glance. The manuscript tradition of the Danish *Jyske Lov* features a very selective digest with an arrangement that makes a primarily pragmatic intention behind the making of this text improbable. See Rohrbach 2010

63 The text has been edited in DI II: 221–22 and Már Jónsson 2004: 272.

hagiographies or in connection with canonical procedure⁶⁴; the noun *arbitri* for arbitrators goes back to Canon and Roman law and is not found elsewhere in the Old Norse tradition. The text also lists cases in which the king is subordinate to the emperor as unappealable.⁶⁵ The source for this list still needs to be identified, but the contents and wording clearly point towards Canon law as the probable origin of the provisions.

Skarðsbók is among the very first text-witnesses transmitting these two rather different digests of legal texts, and it is the oldest manuscript featuring both texts. In order to get closer to possible motivations behind the making and inclusion of these digests, it might be fruitful to examine other early manuscripts featuring one or both of the texts. AM 135 4to, *Arnarbælisbók*, is dated to c.1350 and thus more or less contemporaneous to *Skarðsbók*. AM 135 4to has been discussed thoroughly by Eike Schnall, who argued that the compilation of texts in the beginning of this codex with the beginning of the gospel of John (f. 4v), the ten commandments (f. 4v–5v), and – as in *Skarðsbók* – the miracles of Judgment Day (f. 5v) along with the illumination of the codex were meant to underline the divine origin of law and juridical authority by means of placing it within a salvation–historical framework.⁶⁶ Schnall pointed to the close relationship between *Arnarbælisbók* and the slightly younger AM 48 8vo and AM 344 fol. in terms of the setting of the codices in a Christian context, as they also feature the beginning of the gospel of John and a prayer and furthermore illuminations of the crucifixion preceding *Jónsbók*.⁶⁷ AM 48 8vo does not feature the law book proper, but only *Saktal í Jónsbók* (ff. 31r–44v), embedded in a compilation very similar to the one found in *Arnarbælisbók*, and AM 344 fol. contains *Þessum málum* (f. 62v), which was later also inserted in AM 135 4to and AM 48 8vo towards the end of the fifteenth century.⁶⁸ Thus, scribes engaged with providing the law with a religious legitimation were obviously the same as those who were interested in inserting textual condensations and rearrangements of legal texts.

Þessum málum is also handed down in *Skálholtsbók eldri*, AM 351 fol., and in AM 347 fol., which features an encompassing list of ecclesiastical statutes (ff. 85r–98v), comparable to *Skarðsbók* and *Skálholtsbók*. AM 347 fol. is also the

64 See ‘appellera’ on: www.onp.hum.ku.dk (last access 15 February 2013).

65 ‘ok þij odru sem pauin dæmir. eðr konungr sa er hann er lydskylldr undir keisara.’ (AM 350 fol. f. 81r., and secondly cases in which the pope gives judgment or the king when he is subordinate to the emperor.)

66 Schnall 2005b: 103

67 Ibid: 102

68 DI II: 221

oldest manuscript with a numbered table of contents in the Icelandic tradition (ff. 4v–8r), which refers to all texts compiled in the codex.⁶⁹ These two codices also show affinity to learned religious-ecclesiastical matters, which goes along well with the supposed origins of *Bessum málum* in Canon law. Both digests thus seem to be rooted in an ecclesiastical context, and as discussed earlier, at least the writing down of *Skálholtsbók eldri* and *Skarðsbók* has been connected to ecclesiastical institutions, the bishop's see in Skálholt, and the Augustinian monastery at Helgafell, respectively.

As mentioned previously, *Skarðsbók* also contains a digest of the Christian laws section of *Grágás*, *Saktal hins forna cristins retz*. The introductory words remind us of the beginning of *Saktal í Jónsbók*:

If somebody wishes to handle quickly specific cases in the old Christian Law, then he should read what follows in the following matter.⁷⁰

The Christian laws section of *Grágás*, *Kristinna laga þáttir*, is included in a considerable number of *Jónsbók* manuscripts, primarily of the fourteenth century, among which are the already mentioned AM 347 fol., AM 351 fol., and AM 135 4to. The inclusion of the Christian laws section of the outdated *Grágás* has to be understood in the context of the above-mentioned long-lasting conflicts between king and church on legal authority, which led to legal uncertainty and obviously a parallel use of the old and the new Church law over a period of several decades until the end of the fourteenth century.⁷¹ The digest of the old Christian law in *Skarðsbók* lists cases involving outlawry or penalties in an abbreviated form, following more or less the order of the law book. There are no references to the original articles.

The material presentation of the three digests in the codicological context does not support the idea that they primarily served as pragmatic tools meant for everyday use, at any rate not in the collocation of *Skarðsbók*. All three texts are located in the middle of the codex, placed in between other minor legal texts, so that the three texts are not easy to find. None of the texts is introduced by historiated initials, as we can find them at the beginning of other important texts in the codex.⁷² The foliate initial E that marks the beginning of *Saktal í Jónsbók* is

⁶⁹ Rohrbach 2009: 811

⁷⁰ AM 350 fol. f. 147r: 'Ef nockurr uill hondla med skiotu aliti. ser huerar sakar. hins forna cristins rettz. þa lesi þat sem hér fylgir i eptir faranda efni.'

⁷¹ Már Jónsson 2005: 37–38. See also the rubric introducing *Kristinréttir* on f. 107v of *Skarðsbók*, in which *Kristinréttir* is addressed as new Church Law which was only valid for the diocese of Skálholt.

⁷² A human head is drawn within the initial P introducing *Bessum málum*. Similar drawings of human heads are found in a number of other initials in the manuscript, at apparently random places.

admittedly rather tall, measuring six lines, preceded by two lines of rubricated text. This dimension corresponds to the height of the historiated initials introducing *Jónsbók* (letter M measuring five lines with a descender covering the whole page), its individual sections, *Hirðskrá* (letter Þ measuring six lines with descenders and ascenders covering the whole page, preceded by three lines of rubricated text), and *Kristinréttir* (letter A measuring seven lines, preceded by three lines of rubricated text). *Þessum málum* and *Saktal hins forna cristins retz* are not lifted out in the same way; the bodies of their unfurling foliate initials E and Þ (excluding ascenders and descenders) measure three lines, corresponding to the initials introducing the individual articles of *Jónsbók*, the royal amendments, and the ecclesiastical statutes in this codex.

Framing the law: Layout and illuminations in *Skarðsbók*

The accumulation of textual innovations in *Skarðsbók* is presented in an outstanding manner in the context of the Icelandic legal tradition. As discussed by Már Jónsson, the average *Jónsbók* manuscript is slightly smaller than the average medieval Icelandic manuscript and thus easy to carry around, but there are a couple of rather bulky *Jónsbók* manuscripts in folio format, and *Skarðsbók* is by far the largest, measuring 36.4×27.3 cm.⁷³ It is by all means the most splendid of all *Jónsbók* manuscripts with a very impressive format, but also a very neat layout with an unusually large script, relatively few abbreviations, wide margins, and costly and lavishly executed illuminations with a large number of historiated initials in the beginning of the main texts of the codex, *Jónsbók* (f. 1v), *Hirðskrá* (f. 91r), and *Kristinréttir* (f. 107v), but also in the beginning of the individual sections of the law book.⁷⁴ The text is throughout the whole original part of the codex presented in two columns of 28 lines. Ólafur Halldórsson also pointed out the extraordinary diligence and regularity in the arrangement of quires in the codex.⁷⁵ The

⁷³ Már Jónsson forthcoming.

⁷⁴ Ólafur Halldórsson 1966: 9–10. Historiated initials in the beginnings of sections are to be found on ff. 2r (*Þingfarabálkr*), 5v (*Kristinréttir*), 9v (*Mannhelgi*), 19r (*Kvennagiptingar*), 27r (*Framfærslubálkr*), which in this manuscript is introduced as *Landabrigðabálkr*), 31r (*Landabrigðabálkr*, which is introduced with historiated initial and rubric, but without being called a separate section), 34r (*Búnaðarbálkr*), 51r (*Rekapatir*), 55r (*Kaupabálkr*), 61v (*Farmannalög*), and 67v (*Þjófabálkr*). The initial introducing *Konungs Þegnaskýlda* is a foliate I, covering the whole page (f. 9r), the initial in the beginning of *Erfðatal* (f. 21r) has not been executed. For a more detailed presentation of the splendid layout of the manuscript, see Ólafur Halldórsson (1981): 47 and Lena Liepe (2009): 25–38. The list of contents in the latest facsimile edition of *Skarðsbók* does not correspond to the actual structure of the manuscript regarding ff. 19r–34r (Jónas Kristjánsson 1981: 64).

⁷⁵ Ólafur Halldórsson 1981: 47

neat execution and the regular arrangement of quires throughout the original part of the codex indicate that it follows a well-planned arrangement of texts and does by no means represent a random gathering.

In an analysis of the interplay between text and illuminations in *Skarðsbók*, Lena Liepe and Karl Gunnar Johansson came to the conclusion that the pictorial motifs displayed in the historiated initials in the first three sections of *Jónsbók* underline the divine foundation of the law and place it within a salvation–historical context.⁷⁶ This interpretation goes along well with the arrangement and contents of legal texts and with Schnall’s analysis of the encyclopaedic texts in *Skarðsbók*. But we also find historiated initials of a different kind in *Skarðsbók*, such as in the beginning of *Hirðskrá* on folio 91r. This illumination displays a king and a subject both holding on to a sword and a book. It is interesting to find this motif in the beginning of *Hirðskrá* in *Skarðsbók*, as it is repeatedly found in the initial of the introductory letter of King Magnus in the beginning of *Jónsbók* in other manuscripts.⁷⁷ The book depicted in these illuminations can with reasonable certainty be identified as a representation of the written law, *Hirðskrá* and *Jónsbók*, respectively, and the scene has been understood as a depiction of the royal promulgation of law.

The art historian Selma Jónsdóttir pointed out that the historiated initial introducing *Pingfjararbálkr* of *Jónsbók* on folio 2r indicates that the manuscript was intended as a gift for the church, as in this illumination a layman is holding out a book towards the Holy Trinity.⁷⁸ However, owner notes in the manuscript itself indicate that it probably never actually was in the ownership of a clerical institution.⁷⁹ I would like to tentatively suggest a different interpretation of the scene in the beginning of *Pingfjararbálkr*. Lena Liepe and Karl Gunnar Johansson identified the depiction of the Holy Trinity as the Throne of Grace, and thus as a visualization of the Last Judgment.⁸⁰ Ensuing from this interpretation and taking into account the historiated initial in the beginning of *Hirðskrá*, one might interpret the scene as depicting the submission of the worldly law by man for evaluation on Judgment Day rather than as a concrete donor representation as undertaken by Selma Jónsdóttir and accepted in every study dealing with *Skarðsbók* subsequently.

⁷⁶ Johansson and Liepe forthcoming

⁷⁷ For instance, in AM 343 fol. and AM 347 fol. See also Johansson and Liepe forthcoming

⁷⁸ Selma Jónsdóttir 1964

⁷⁹ Ólafur Halldórsson 1966: 15

⁸⁰ Johansson and Liepe forthcoming

Bending the law: The political situation in Iceland, AD 1363

To what extent was this reworking and new material presentation of the law influenced by recent developments inside and outside of Iceland? Is it possible to explain the focalization of the contents of *Skarðsbók* within the sociopolitical context of its time? The point in time at which *Skarðsbók* was written down is a time of political change and turmoil both in the wider context of the history of *Norgesveldet* and in an Inner-Icelandic context. It is worthwhile to recall the course of events in the years directly preceding the making of *Skarðsbók*, as they might provide a key to the motivation behind the making of this manuscript. In 1355, King Magnus Eriksson, king of Norway and Sweden, had conveyed the crown of Norway to his son Hákon, who in 1363 – in the very same year *Skarðsbók* was written – married Margrete, the daughter of the Danish king Valdemar. Magnus was, however, still king of Sweden and Iceland and other Norwegian tributaries. Because of these developments the government of remote Iceland was hardly a priority for King Magnus, who decided to lease out Iceland for a course of 3 years at a time with all revenues to the governors. The first governor of this kind was Ívar hólmr Vigfússon, who came out to Iceland in 1354.⁸¹ He was followed by four members of the Icelandic elite for the period 1358–61 who were shared governors for the country: Árni Þórðarson and Andrés Gíslason for the eastern and southern quarter, and Jón Guttormsson and Þorsteinn Eyjólfsson for the northern and western quarter.⁸² As *Lögmannsannáll* and *Flateyjarannáll* relate for 1358, the population was thronged because these four governors and envoys of the archbishop were collecting revenues throughout the country.⁸³ According to *Flateyjarannáll*, the northern quarter offered resistance to this demeanour of the governors, and in 1360 Jón Guttormsson had to move southwards because of this resistance.⁸⁴

In 1361, Smiðr Andrésson, presumably of Norwegian origin, succeeded as the next governor.⁸⁵ About the same time, priests and laymen of Eyjafjörður revolted against the bishop of Hólar, the Norwegian Jón Eiríksson skalli. The annals mention his unclear legitimation for the bishopric in Hólar (he was originally appointed for the bishopric in Greenland and could not provide a papal letter to prove his claim for Hólar) as a reason for the conflict.⁸⁶ An assembly at Hólar was

⁸¹ Storm 1888 (hereinafter IA): 276, 356, 405

⁸² IA: 277, 406

⁸³ IA: 277, 406

⁸⁴ IA: 407

⁸⁵ IA: 278, 358, 407

⁸⁶ IA: 225, 277–78, 357. *Flateyjarannáll* mentions an oral witness account of two envoys of the archbishop as proof of the righteousness of his claim before his arrival in Iceland (IA: 406).

convened in spring 1362 in order to solve the conflict, in which Smiðr and the officialis of Skálholt participated, but the meeting ended without result.⁸⁷ Among the main opponents of Bishop Jón were the priest Þorsteinn Hallson and possibly also the former governor Þorsteinn Eyjólfsson; at least it is said that he left together with the Eyfirðingar for Norway after the assembly.⁸⁸ In July 1362, the governor and the two lawmen, Ormr Snorrason and Jón Guttormsson, rode to encounter the men at Eyjafjörður, where Smiðr was killed together with Jón Guttormsson and others in a battle at Grund.⁸⁹

Smiðr was succeeded by Þorsteinn Eyjólfsson as governor of south and east, who at the same time was lawman of north and west, and Ólafur Pétursson as governor of north and west for the years 1363–66,⁹⁰ when they were succeeded by Ormr Snorrason (who at the same time was still lawman of south and east) and Andrés Gíslason, both appointed by King Hákon during the imprisonment of his father.⁹¹ Bishop Jón Eiríksson's legitimation was continuously contested by clerics and laymen in the northern quarter during the next years. A letter of acknowledgement by King Hákon in 1365 did not put an end to this conflict.⁹² He was only finally accepted when he came back from Rome with a papal bull in 1370, being the first Icelandic bishop directly appointed by the pope.⁹³

Skarðsbók has in the past been connected to several members of this Icelandic elite of the time. Ólafur Halldórsson the older (1855–1930), Ólafur Halldórsson the younger, and Helgi Þorláksson have, amongst others, favoured the idea that the man behind the making of *Skarðsbók* was Ormr Snorrason, and this is to date the most prominent and widely accepted attribution in the scholarly debate related to this manuscript, because the manuscript can be connected to Skarð, Ormr Snorrason's homestead, in later times and also because of the geographical proximity between Skarð and Helgafell.⁹⁴ Jón Helgason brought Ívar hólmur Vigfússon, Andrés Gíslason, and Þorsteinn Eyjólfsson into the field as other likely candidates.⁹⁵ The idea behind all of these attributions is that the man behind *Skarðsbók* must have been a high member of the Icelandic political elite, a royal liegeman or official,

87 IA: 278–79, 408

88 IA: 279

89 IA: 279, 359. For a detailed account of the events in these years, see Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1989: 238–43.

90 IA: 227

91 IA: 361

92 DI III: 209; IA: 227

93 IA: 228, 411

94 Ólafur Halldórsson 1981: 49–50 and Helgi Þorláksson 2012: 85. See also Wærdahl 2011: 224

95 Jón Helgason 1958: 70

well educated in legal matters, an assumption which has been substantiated in the course of this study. Especially the arrangement of *Saktal í Jónsbók* by penalty points towards an involvement of the leasehold-governors in the middle of the fourteenth century, as they were entitled to collect all revenues during the time of their governorship.

The political situation in Iceland was troubled and intricate, and the coalitions within the political elite were changing ones. But it is possible to discern men predominantly supporting the king's case and others taking a stand for the Icelandic case among the elite. Ormr Snorrason seems to have been a true supporter of the Icelandic case.⁹⁶ This does not make him seem a probable commissioner of *Skarðsbók*, with its distinctive focus on royal authority, the duties of the local officials, sheriff, and lensman, and its comprehensive approach to Icelandic law as part of the law of the realm. The hypothesis that the compilation of texts with a significant interest in penalties point towards a leasehold-governor of these years as commissioner of *Skarðsbók* brings Þorsteinn Eyjólfsson into play again as a likely candidate. The annals depict him as a stalwart of King Magnus, fighting the unrighteous behaviour of laymen and clerics alike. Þorsteinn was repeatedly appointed by King Magnus as governor or lawman of north and west, sometimes even occupying both offices simultaneously.⁹⁷ Jón Helgason pointed out that *Skarðsbók* was owned by descendants of Þorsteinn Eyjólfsson subsequently, a claim that I was not able to verify so far.⁹⁸ We have, however, no information about a close connection to the monastery in Helgafell, where *Skarðsbók* was written down.⁹⁹

But this suggested alternative attribution is nothing more than an intellectual game; it is beyond the objective of this chapter to identify the individual behind the making of *Skarðsbók*. We will most probably never be able to know without speculations who the man behind *Skarðsbók* really was. The contents and the codicological arrangement of the manuscript depict him (or them) as an affluent man, trained in the laws, well acquainted with the very latest developments in

96 On the notion of *regimen politicum* and *regimen regale* in an Icelandic context, see Helgi Þorláksson 2012: 84–85.

97 Wærdahl 2011: 260, 267

98 Jón Helgason 1958: 70

99 In his last will dating from 1386, Þorsteinn donates considerable amounts to the cathedral of Hólar, as well as to the monasteries Þingeyrar, Reynistaður, Möðruvellir, Munkaþverá, and to a number of other churches and to St. Þorlákr and the cathedral in Skálholt. Helgafell is not mentioned in the list of recipients (DI III: 391–92). In his function as lawman, Þorsteinn ratified the inventory (ON *máldagi*) of Helgafell in 1399 (DI III: 646, Wærdahl 2011: 263), but Þorsteinn and other lawmen obviously ratified a large number of written deeds of a different kind.

the written legal tradition and the learned juridical discourse of his time, and with a distinctive interest in displaying the local Icelandic secular and ecclesiastical law as part of the legislation of the Norwegian king which in turn is part of the salvation-historical course of time. The project was closely connected to recent developments: The selection of amendments and statutes in *Skarðsbók* with its emphasis on moderation and righteousness in the execution of offices and the discussion of the juridical limits of secular and ecclesiastical authorities mirrors the Icelandic political landscape of the mid fourteenth century.

We must of course take into account that the majority of all medieval codices has been lost over time and that we only know a fraction of the manuscripts extant during the medieval period. But the sheer quantity of innovations in *Skarðsbók* combined with the outstanding material presentation indicates that the culmination of first-time text-witnesses in this manuscript is not just a coincidence of transmission, but that we are dealing with a programmatic codex of impressive nature. *Skarðsbók* is a child of its time, taking up the issues at hand and placing them within a wider legal context. It presents Icelandic law as coherent, inseparable community of secular and ecclesiastical law, subject to the authority of the king and the archbishop. And this Icelandic law and the compliance with this legislation by the Icelandic officials have to stand up to the Last Judgment, as displayed in the historiated initial in the beginning of *Þingfararbálkr*.

Conclusions

The case study of *Skarðsbók* shows that it is reductionist to see the tradition of *Jónsbók* as being a stable one throughout the Middle Ages. Every manuscript of *Jónsbók* follows a specific impetus in its compilation and material presentation of legal texts. The present study of material, codicological, and textual aspects of *Skarðsbók* showed that this codex is in different respects closely connected to a number of other contemporaneous manuscripts: to AM 351 fol., *Skálholtsbók eldri*, in its inclusion of royal amendments and especially ecclesiastical statutes; to AM 343 fol. as to the comprehensive interpolated version of *Jónsbók*; to AM 135 4to, AM 48 8vo, and AM 344 fol. as to the inclusion of digests as well as encyclopaedic and theological texts; and finally to the manuscript group called *Helgafellsbækur* as to the making of the codex.

Skarðsbók takes up selected elements from several models and merges them into a unit. The different innovations do not co-occur all together in any other contemporaneous manuscript: AM 351 fol. contains the uninterpolated version of *Jónsbók* and has not included any texts of non-legal matter. AM 343 fol. does not

contain more than the law book itself, and draws on a different iconographical tradition in its inclusion of historiated initials.¹⁰⁰ AM 135 4to, AM 48 8vo, and AM 344 fol. also feature a different set of illuminations, with miniatures of St. Olaf and Bishop Árni in the beginning of *Jónsbók* and *Kristinréttir* in AM 135 4to and miniatures of the crucifixion in the beginning of AM 48 8vo and AM 344 fol.¹⁰¹ AM 135 4to furthermore also contains the uninterpolated version of *Jónsbók*, AM 344 fol. one of the early sporadic interpolated versions, and AM 48 8vo has not included *Jónsbók* at all. The group of Helgafell books only comprises one other manuscript of *Jónsbók*, AM 156 4to, which on the textual level is closely related to *Skarðsbók*; all the other manuscripts of this scriptorium contain sagas of different kinds and ecclesiastical literature.¹⁰² This finding goes along with the general picture that the vast majority of *Jónsbók* manuscripts draw on several textual models.¹⁰³ The men behind the making of *Skarðsbók* drew on a vivid polyphonic tradition and combined several recent innovations to form a new, by all means impressive, law code. The project obviously had impact on the later reception of the law book, as can be seen in the subsequent manuscript tradition.

Bibliography

Manuscripts

AM 343 fol., *Svalbarðsbók*

AM 344 fol.

AM 347 fol., *Belgsdalsbók*

AM 350 fol., *Skarðsbók*

AM 351 fol., *Skálholtsbók eldri*

AM 135 4to, *Arnarbælisbók*

AM 156 4to

AM 48 8vo

GKS 3270 4to

¹⁰⁰ Johansson and Liepe forthcoming

¹⁰¹ Schnall 2005b: 79, 102

¹⁰² Ólafur Halldórsson 1966: 51–52. Lena Liepe (2009: 120) includes AM 347 fol. into the group of Helgafell manuscripts, departing from Stefán Karlsson's finding that the last four folios of AM 347 fol. were written in the main hand of *Skarðsbók*. The fact that the last four folios, containing ecclesiastical decrees, are in the same hand as *Skarðsbók*, does however not prove that AM 347 fol. came into being at Helgafell, but only that the scribe of *Skarðsbók* had the codex in his hand and added some folios at the end. This finding thus supports the finding of multiple models discussed earlier.

¹⁰³ Már Jónsson 2001

Printed sources

- Björn Þorsteinsson & Guðrún Ása Grímsdóttir, Norska öldin, in Sigurður Línal (ed.) *Saga Íslands* IV. Reykjavík 1989, 59–258
- Degnbol, Helle et al. (ed.), *Ordbog over det norrøne prosasprog*. Registre (ONP), Copenhagen 1989
- Diplomatarium Islandicum* (DI), 16 volumes, Copenhagen and Reykjavík 1857–1972
- Gunnar Karlsson, *The History of Iceland*, Minneapolis 2000
- Helgi Þorláksson, King and commerce. The foreign trade of Iceland in medieval times and the impact of royal authority, in Steinar Imsen (ed.) *The Norwegian Domination and the Norse World c.1100– c.1400*, Trondheim 2010: 149–173
- , Ríkisvald gegn þingvaldi – Fulltrúar vaxandi ríkisvaldis takast á við fulltrúa þingvalds, in: Lars Ivar Hansen, Richard Holt and Steinar Imsen (ed.), *Nordens plass i middelalderens nye Europa. Samfunnsordning, sentralmakt og periferier*, Speculum Boreale 16 (Tromsø 2011): 105–123
- , Sturlunga – tilurð og markmið, in *Gripla* 23 (Reykjavík 2012): 53–92
- Imsen, Steinar (ed.), *Hirdskræn. Hirdloven til Norges konge og hans håndgangne menn. Etter AM 322 fol*, Oslo 2000
- Jacobsen, Bent Christian, Sektir Jónsbókar, in *Gripla* 7 (Reykjavík 1990): 179–185
- Jakob Benediktsson (ed.), *Skarðsbók. Jónsbók and other Laws and Precepts. MS. No. 350 fol. in the Arna-Magnæan Collection in the University Library of Copenhagen*, Corpus Codicum Islandicorum Medii Aevii 16 (Copenhagen 1943)
- Johansson, Karl Gunnar & Liepe, Lena, Text and Images in Norwegian and Icelandic Fourteenth Century Law Manuscripts, in Lena Rohrbach (ed.) *The Power of the Book. Medial Approaches to Medieval Nordic Legal Manuscripts*, Berliner Beiträge zur Skandinavistik 19 (Berlin forthcoming)
- Jón Helgason, *Handritaspjall*, Reykjavík 1958
- Jónas Kristjánsson (ed.), *Skarðsbók. Codex Scardensis AM 350 fol.*, Manuscripta Islandica medii aevi 1, Reykjavík 1981
- Kålund, Kristian (ed.), *Katalog over Den Arnemagnæanske Handskriftsamling*. Vol. 1, Copenhagen 1889
- Liepe, Lena, *Studies in Icelandic Fourteenth Century Book Painting*, Snorrastofa Rit 6, Reykholt 2009
- Már Jónsson (ed.), *Jónsbók. Lögbók Íslendinga hver samþykkt var á alþingi árið 1281 og endurnýjuð um miðja 14. öld en fyrst prentuð árið 1578*, Sýnisbók íslenskrar alþýðumenningar 8, Reykjavík 2004

- , The Size of Medieval Icelandic Codices, in Lena Rohrbach (ed.) *The Power of the Book. Medial Approaches to Medieval Nordic Legal Manuscripts*, Berliner Beiträge zur Skandinavistik 19 (Berlin forthcoming)
- , *Textatengsl nokkurra elstu handrita Jónsbókar*, in *Lindæla. Sigurður Línal sjötugur*, Reykjavík 2001: 373–389
- Már Jónsson, Haraldur Bernharðsson & Magnús Lyngdal Magnússon (eds.), *Járnsíða og Kristinréttur Árna Þorlákssonar*, Reykjavík 2005
- Ólafur Halldórsson, *Helgafellsbækur fornar*, Studia Islandica 24, Reykjavík 1966
- , (ed.), *Jónsbók. Kong Magnus Haakonssons lovbog for Island vedtaget paa Altinget 1281*, Copenhagen 1904
- , *Skarðsbók. Origins and History*, in: Jónas Kristjánsson (ed.) *Skarðsbók. Codex Scardensis AM 350 fol.*, Manuscripta Islandica medii aevi 1, Reykjavík 1981: 46–51
- Rohrbach, Lena, Die Fabrikation des Rechts. Implikationen medialer Ausformungen in west- und ostnordischen Rechtsbuchhandschriften, In: Agneta Ney, Henrik Williams & Fredrik Charpentier Ljungqvist (ed.) *Á austrvega. Saga and East Scandinavia*. Vol. 2, Papers from the Department of Humanities and Social Sciences 14 (Gävle 2009): 807–815
- , Pragmatik in Szene gesetzt. Mediale Dimensionen spätmittelalterlicher Handschriften des Jyske Lov, in *Opuscula XIII*, Bibliotheca Arnamagnæana 47 (Copenhagen 2010): 119–172
- , The Written Legacy of the Sturlung Age. Reflections on a Media Change, in: Jürg Glauser & Kate Heslop (ed.) *Mediality in Late Medieval Iceland*, Medienwandel – Medienwechsel – Medienwissen 27 (Zürich forthcoming)
- Schnall, Jens Eike, Die dies mali und andere Unglückstage. Kontextualisierung, Kompilationsmuster und Wissensordnung in nordeuropäischen Handschriften des Spätmittelalters, in *Opuscula* 12, Bibliotheca Arnamagnæana 44 (Copenhagen 2005a): 343–378
- , Recht und Heil. Zu Kompilationsmustern in Handschriften der Jónsbók, in *Gripla* 16 (Reykjavík 2005b) 75–114
- Schulman, Jana (ed.), *Jónsbók. The Laws of Later Iceland. The Icelandic Text According to MS AM 351 fol. Skálhótsbók eldri*, Bibliotheca Germanica Series Nova 4, Saarbrücken 2010
- Selma Jónsdóttir, Gjöfaramynd í íslenzku handriti, *Árbók hins íslenska fornleifafélags* (1964): 5–19
- Sigurður Línal, The law codes of Skarðsbók, in Jónas Kristjánsson (ed.) *Skarðsbók. Codex Scardensis AM 350 fol.*, Manuscripta Islandica medii aevi 1, Reykjavík 1981: 52–63

- Storm, Gustav (ed.), *Islandske annaler indtil 1578* (IA), Christiania [Oslo] 1888
—, (ed.), *Norges gamle Love indtil 1387*. Vol. 4, Christiania [Oslo] 1885
Strauch, Dieter, *Mittelalterliches nordisches Recht bis 1500. Eine Quellenkunde, Ergänzungsbände zum Reallexikon der germanischen Altertumskunde 73* (Berlin 2011)
Wærdahl, Randi Bjørshol, *The incorporation and integration of the king's tributary lands into the Norwegian realm, c.1195–1397*, *The Northern World* 53, Leiden 2011

Digital sources

- <http://www.am.hi.is:8087/WebView.htm> (last access 15 February 2013)
www.handrit.is (last access 15 February 2013)
www.onp.hum.ku.dk (last access 15 February 2013)

Chapter 11: The court and assembly organisation in Iceland c.1250–1450

Jón Viðar Sigurðsson

In geographical terms, the realm of the king of Norway was probably the largest polity in Europe in the High Middle Ages, stretching from the Kola Peninsula in the north to the Göta River in the south, and from Ragunda in the east to Davis Strait in the west.¹ To overcome the distance between the centre and the periphery, a system of assemblies was crucial in keeping the whole realm together. Let us look at Iceland, the largest of the royal dominions, as a model case.

In the years 1262–64, Iceland became a ‘skattland’ (tributary country) under the king of Norway. The end of the Free State period (930–1262/64) was marked by the introduction of two royal law codes, *Járnsíða* in 1271 and *Jónsbók* in 1281. The chieftains (‘goðar’) who had dominated Iceland until then were replaced by royal officers, and state-like structures of Norwegian provenance were introduced. A royal governor, from 1320 called ‘hirðstjóri’ (i.e. head of the body of royal liegemen – ‘hirð’), was put on the top of the new administrative system, and a changing number of ‘sýslumenn’ (sheriffs, mostly two or four) were made responsible for the collecting of taxes and fines and prosecution on behalf of the king. There were two ‘lögmenn’ (lawmen, presiding judges) after 1277; their work concerned judicial matters at the ‘Alþingi’ (General Assembly). They chaired the ‘lögretta’ (the law council), which prior to 1271 had been a legislative body, but now became a law court. Legislation was hereafter a royal prerogative. In fact, the Alþingi itself was transformed into a ‘lögþing’ (lawthing), though it kept its old name.

The terms ‘þing’ and ‘leið’ are commonly used to describe assemblies in Icelandic and Norwegian sources, whilst ‘mót’ and ‘fundr’ are used for ordinary meetings.² The main distinction between these two pairs of words is that the first

¹ <http://www.ntnu.no/ihk/realmofnorway> (14 January 2013)

² Irlenbusch-Reynard 2005: 6–13. In Norway ‘mót’ is also a term for public þing-like meetings in the towns (‘bœjarmót’), but this has no relevance for Iceland since there were no towns in that country.

pair is associated with the public and public gatherings, whereas the second is usually used to describe private meetings. The Latin terminology does not have this seemingly clear distinction between public and private meetings; ‘placitum’, ‘synodus’, ‘conuentus’ and ‘curia’ were used to describe both types of gatherings.³ Hence, Paul S. Barnwell and Marco Mostert give a rather open definition of ‘assemblies’ in the introduction to their volume on *Political Assemblies in the Earlier Middle Ages*. Assemblies ‘were occasions when groups, often relatively large groups, convened for a specific purpose. It follows that there were many different kinds of assembly, and that the term could encompass sports gatherings or fairs, liturgical gatherings and synods, and political or administrative gatherings’.⁴ In this chapter, I will, in accordance with both Icelandic and Norwegian tradition, use a narrower definition and mainly focus on mentions of the terms ‘þing’ and ‘leið’ in *Járnsíða* and *Jónsbók*. I will start by looking at the ‘Alþingi’ at Þingvellir, before discussing the local assemblies.

Alþingi

‘Alþingi’, which was summoned every summer, was the most important institution in the Free State. Decisions taken there affected the whole country. After Iceland became a royal dominion, the ‘Alþingi’ maintained its national position, but now as a court at the top of the assembly organisation of the country and a national representative body.⁵ According to *Járnsíða* and *Jónsbók*, the ‘þingmenn’ (assembly men) should arrive at Þingvellir at the latest on the evening of 28 June, the feast of St Peter. This was the day before the ‘Alþingi’ convened.⁶ *Járnsíða* has no provisions for how long the ‘Alþingi’ should last. On the other hand, *Jónsbók* states that the assembly should last as long as the lawman decided and deemed necessary, according to the issues that were to be considered and that the ‘lögréttumenn’ (the men appointed to sit in the ‘lögrétta’) had agreed to settle.⁷ Usually, the ‘Alþingi’ came to an end after three or four days.⁸

3 Reuter 2001: 432–44; Barnwell & Mostert 2003 3. Cf. Quillet 1988; Pantos and Semple 2004

4 Barnwell & Mostert 2003 3

5 For a discussion on the assembly organization in Iceland in the period c.1250–1450, see Ólafur Lárusson 1958, 249–68; Björn Þorsteinsson and Sigurður Lindal 1978: 71–75; Lýður Björnsson 1972: 94–95, 117–19

6 Jón Jóhannesson 1958: 33; *Jónsbók* (2004): 81

7 *Jónsbók* (2004): 83

8 Jón Jóhannesson 1958: 33

According to *Grágás*, the ‘lögrétta’ should make new laws, interpret the laws when there was disagreement about them and decide on various kinds of exemption from the laws. The new code altered the function of ‘lögrétta’. It now became the highest court in the country under the auspices of the lawmen. (Though decisions in Icelandic courts could be appealed to the king, all cases of homicide ended automatically in the royal chancery in Norway.) Until 1277, Sturla Þórðarson was the only lawman in Iceland, but by then the country was divided into two ‘lögðæmi’ (i.e. lawmen’s legislative district): *sunnan* and *austan* (with Jón Einarsson as the first lawman, 1277–94) and *norðan* and *vestan* (with Sturla Þórðarson as the first lawman, 1277–82).⁹ This division was based on the old territorial units called ‘fjórðungar’ (quarters) from c.965 AD. Thus, the jurisdictions *norðan* and *vestan* corresponded to the northern and western quarters, and the jurisdictions *sunnan* and *austan* to the southern and eastern quarters.

Little is known about the size of the population in Iceland around 1300, but in a census from 1703, which gives a total overview of the population, 50,358 people lived in the country, with 28,573 in the *norðan* and *vestan* legislative districts and 21,785 in the *austan* and *sunnan* legislative districts.¹⁰ Much evidence suggests that the size of the population and the settlement pattern in 1703 was similar to the situation around 1300. Thus, the census from 1703 gives a fairly good indication of both the size of these jurisdictions and the ratio between them.

The decision to organise the country into two legislative districts meant that the ‘lögrétta’ was divided into two departments, each chaired by a lawman dealing with cases from his half of the country. The number of men in the ‘lögrétta’ was 36, and each lawman nominated 18 men (‘nefndarmenn’) from his district. A total of 6, 12 or 24 nominated men sat in the courts. The significance of the cases decided the number of judges. When 24 men were nominated to sit in a court, each lawman elected 12. When a court had reached a verdict, the lawman or the lawmen had to approve it. The ‘lögrétta’ functioned both as a first step in a court case and as an appeal court.¹¹

Before the proceedings in the ‘lögrétta’ could begin, the lawmen put up a ‘vébönd’ (ropes fastened to stakes to surround the court)¹² that was large enough

9 Björn Þorsteinsson and Sigurður Línal 1978: 62; Einar Laxness 1995 II: 141

10 Hagskinna 86, 88 (I have divided the population in Borgarfjarðarsýsla, that is, 2,070, equally between the two legislative districts, thus 1,035 in each); Einar Laxness 1995 II: 141

11 *Járnsíða*: 64–67, 113, 127; Björn Þorsteinsson and Sigurður Línal 1978: 65

12 Cleasby and Vigfusson 1874, ‘vébönd’

for all the men who were nominated to sit in the 'lögrétta'. Paragraph four in the Assembly attendance section (*Þingfararþálkr*) states that those men who have been chosen to sit in the 'lögrétta' were to give judgment on all cases presented in a legal way to the courts. The first cases to be dealt with were the most serious ones, as listed in *Jónsbók*. Next came cases which had been summoned to the 'Alþingi'. After that were the cases where men agreed by a handshake in front of two or more witnesses to let the 'lögrétta' deal with their dispute; however, these cases could only be heard if the witnesses were at the 'lögrétta'. Finally, those cases should be heard where the parties involved had settled and were the least serious. 'And regarding all that which the law book does not cover: whatever all the men of the law council agree upon is to stand in each case. But if they disagree, then let the presiding judge and the members of the 'lögrétta' who agree with him prevail, unless the king, acting on the advice of the most prudent men, thinks a different decision is in better accord with the law.'¹³

Björn Þorsteinsson and Sigurður Línal argue for a high degree of continuity between the old 'lögrétta' as a legislative body in the Free State and the new 'lögrétta' as a tribunal in *Járnsíða* and *Jónsbók*. They stress that neither *Járnsíða* nor *Jónsbók* explicitly mentions who should be the legislator, which indicates that there were no plans to change the existing system.¹⁴ They argue further that the king sometimes took the initiative to introduce new laws or give amendments, but it was more common for the 'Alþingi' to ask the king for new laws or changes to *Jónsbók*. In the end, it was the 'Alþingi' that sanctioned the new laws or the amendments.¹⁵ Neither the 'Alþingi' nor the Icelanders ever introduced new laws without asking or consulting the king. It is stated clearly in the sagas and the law codes, and it is clear from recorded practice that it was the king who gave new laws or changed old ones; that he often took the wishes of Icelanders into consideration is, however, another matter.

The institution of the lawman was based on a Norwegian model. The lawman's most important task was to preside over the 'Alþingi', administer the 'lögrétta' and make decisions concerning what the law of the country was. It was not the lawman's job to sit in court and make judgments, but in many cases they had to

13 *Jónsbók* (2010): 15, 'En allt það er lögbók sker eigi skilríkliga úr, þá skal það hafa af hverju máli sem lögréttumenn allir verða á eitt sáttir. En ef þá skilur á, þá skal lögmaður ráða og þeir sem honum samþykkja, nema konungi sýnist annað lögligra með vitrustu manna ráði.' *Jónsbók* (2004): 84

14 Björn Þorsteinsson and Sigurður Línal 1978: 66, 69

15 Ibid: 66

make a judgment (‘úrskurðr’) as to what was the correct and authoritative understanding of the law, and thus they handed down sentences indirectly. Those who did not accept the decisions of the lawmen had to pay a fine of four marks. Outside the ‘Alþingi’, the lawman’s task was to clarify what the law of the country was. *Jónsbók* does not mention any income for the lawmen, but they probably received 1500 ells yearly (an average farm in Iceland was taxed at 2400 hundred in ells) from the ‘þingfararkaup’ (assembly attendance dues), the fee the householders had to pay to cover the expenses of those travelling to the ‘Alþingi’ and a part of the king’s revenue (‘víseyrir’). This was a small income compared with the expenses, so the king granted the ‘lögmenn’ sheriffdoms (‘sýsla’) which became their major income.¹⁶

A recurring theme in the relationship between the Icelanders and the king was whether royal offices in Iceland should be held by Norwegians or native men. The first attempt by the king to appoint Norwegians as royal officials occurred in 1279. The Icelanders reacted strongly against this and the Norwegians went back to Norway without ever taking up their offices.¹⁷

In 1301, two Norwegians came to the country: Alf Bassason as ‘sýslumaðr’ and ‘hirðstjóri’ and Svein Toreson as ‘sýslumaðr’ in Skagafjörður, and the Icelandic lawmen were replaced by the Norwegians Lodin av Bakke and Bård Hogneson.¹⁸ Once again the protests of the Icelanders were strong. In a letter to the king dated 1302, they asked that both lawmen and sheriffs should be Icelanders and be descended from the old chieftain families.¹⁹ The struggle continued for some time, but eventually the king gave in and the Icelanders took over the leading positions in the royal administration; however, in the period c.1270–1450, almost all lawmen were native.²⁰

The dynastic union between Norway and Sweden in 1319 marked a turning point in the relations between Iceland and the king of Norway, since the king from now on gave priority to his political interests in Scandinavia. This meant less pressure from above on the Icelanders. In the period 1354–65, the king farmed out the collection of royal revenues to the highest Icelandic bidder, which was appointed to the office of ‘hirðstjóri’ as well. These men used their position to raise taxes

16 *Járnsíða*: 64–67, 113, 127; *Jónsbók* (2004): 87; KLM X: 163, 153–62; KLM III: 613; Jón Jóhannesson 1958: 82–88; Björn Þorsteinsson and Sigurður Línal 1978: 62–64; Sigriður Beck 2011: 66–67

17 Björn Þorsteinsson and Sigurður Línal 1978: 83

18 Björn Þorsteinsson and Sigurður Línal 1978: 82–83

19 *Jónsbók* (2004): 302; DI I, nr. 153 [1263]; DI II, nr. 177 (1302)

20 Jón Sigurðsson 1886: 4–9

and therefore became highly unpopular, and one of them was even killed.²¹ In the so-called *Skálholtssamþykkt* from 1375, a group of prominent Icelanders put forward a program for reforming local administration as well as jurisdiction. They argued that the ‘lögrétta’ should approve new lawmen, though they stressed that the lawmen should be loyal to the king and show him obedience (‘hlýðni’).²² It can be argued from an Icelandic point of view that it was better for the lawmen to come from the leading families in the country; after all, men from this social stratum had the greatest knowledge of what Icelandic law was. However, there was no guarantee that they would not abuse their positions to accumulate wealth.

In 1391, Þorsteinn Eyjólfsson from Urðir in Svarfaðardalur was appointed as a lawman *norðan* and *vestan* by the ‘hirðstjóri’, with the acclamation of the common people (‘almúgi’).²³ Scholars have argued that this episode shows that Icelanders gained greater influence over the appointment of officials in the last decades of the fourteenth century.²⁴ There is, however, no reason to give too much weight to this episode since it was unique. It was the difficult political situation in Scandinavia that prompted the Icelanders to take this extraordinary step. In 1389, Margrete, King Hakon VI’s queen dowager had entered upon a war with Albrecht of Mecklenburg, king of Sweden. Margrete had been elected regent of Denmark and Norway in 1387–88 and joined forces with the Swedish nobility who wanted to get rid of King Albrecht.

The main reason for resentment of Norwegian officers in Iceland was that the Icelandic elite wanted to keep the revenues they had from the royal offices and the status those offices gave them for themselves. Only naturalised Norwegians were accepted as royal servants in Iceland, which meant that they had to get married to an Icelandic woman to be regarded as native men. It must be emphasised that not many Norwegian noblemen married Icelandic women in the period 1250–1450. It should also be stressed that the royal offices in Iceland were not sought after by the Norwegian aristocracy.

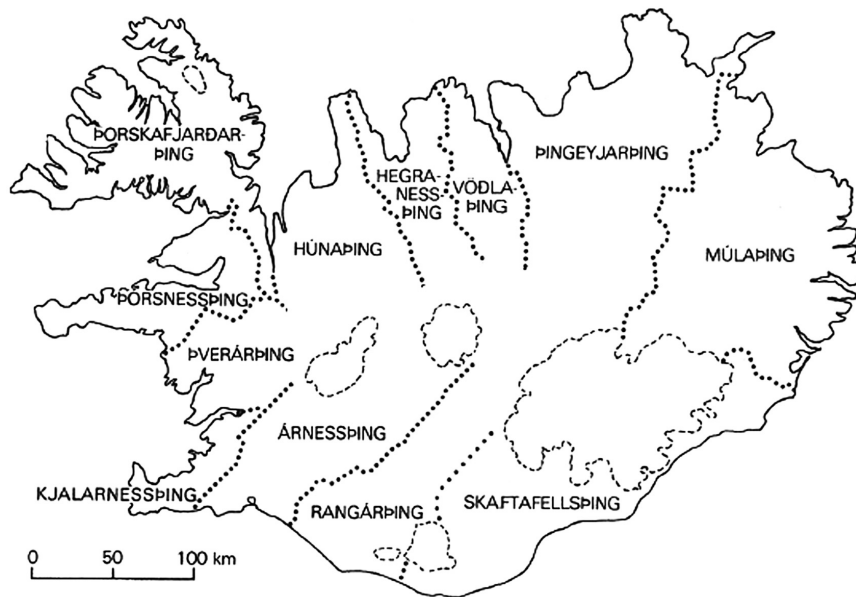
21 Jón Jóhannesson 1958, 79–80; Björn Þorsteinsson and Sigurður Línal 1978: 56–57; Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1989: 238–41; Axel Kristinsson 1998: 138–41

22 DI I, nr. 156 [1264]; DI II, nr. 177 [1302 (correct dating 1306 (Björn Þorsteinsson and Sigurður Línal 1978: 86))]; DI II, nr. 189 [1306. 20. juli 1375]; Björn Þorsteinsson and Sigurður Línal 1978: 62–64; Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1989: 236; Einar Laxness 1995 II: 143; Helgi Þorláksson 2011: 117–19; Sigríður Beck 2011: 69

23 Björn Þorsteinsson and Sigurður Línal 1978: 63–64; Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1989: 236

24 Björn Þorsteinsson and Sigurður Línal 1978: 63

Járnsíða and *Jónsbók* divide the country into 12 ‘þings’ (assembly districts).



In each of the 12 assembly districts, the royal official (‘valdsmaðr’) or his lawful representative (‘löglegur umboðsmaður’) nominated men to attend the ‘Alþingi’.²⁵ These nominated men (‘nefndarmenn’) were appointed for one year at a time and had to be householders who ran their own farms with the aid of servants who were older than 16 winters. Householders who worked without help from a person older than 16 winters (‘einvirkjar’) could not be nominated.²⁶ Nominated men should have a good knowledge of the law and be physically capable of travelling to the ‘Alþingi’.²⁷ They received dues for attending the assembly (‘þingfararkaup’) from the sheriffs, and they were exempt from taxes.²⁸ *Jónsbók*, in accordance with the *Land-law* from 1274, has clear provisions regarding the payment to the men nominated, with those living farthest away from Þingvellir getting the highest compensation.²⁹ Nothing is known about the social background of the nominated men, but it is safe to assume that they came from the upper layers of Icelandic society. It is unlikely

²⁵ *Járnsíða*: 63; *Jónsbók* (2004): 81

²⁶ *Jónsbók* (2004): 148

²⁷ *Járnsíða*: 63

²⁸ *Járnsíða*: 64; *Jónsbók* (2004): 82; Björn Þorsteinsson and Sigurður Líndal 1978: 61

²⁹ *Jónsbók* (2004): 82

that so prestigious and important a position would have been given to poor peasants or tenants.

According to *Járnsíða*, the number of nominated men was 140, but in *Jónsbók* this number was reduced to 84.

‘Nefndarmenn’ to ‘Alþingi’

	Járnsíða ³⁰	Jónsbók ³¹
Múlaþing	6	6
Skaftafellssþing	6	6
Rangárþing	15	8
Árnesþing	20	12
Kjalarnesþing	15	9
Þverárþing	15	8
Þórsnesþing	12	6
Þorskafjarðarþing	8	5
Húnaþing	10	6
Hegranesþing	15	8
Vöðlaþing	12	6
Þingeyjarþing	6	4
TOTAL	140	84

The reduction in the number of men nominated from 140 to 84 is in line with developments in Norway. In the Magnus version of the provincial code for Gulating (western Norway) from c.1160, the number of nominated men was reduced from about 400 to 246. In the Norwegian Land-law from 1274, the number of men nominated to assemble at Gulating was reduced further to 148.³² In 1305, the king tried, unsuccessfully, to reduce the number of men nominated in Iceland to 42, for reasons which are unclear. But in the same year, King Hakon tried to enhance his part of the ‘víseyrir’ by adding half of the ‘þingfararkaup’ to his ‘skattr’, which was met with heavy protests. This might have been just a coincidence, but a reduced

³⁰ *Járnsíða*: 63–64

³¹ *Jónsbók* (2004): 81–82

³² Helle 1974: 182

number of ‘nefndarmenn’ would have reduced the costs as well and made it easier for the King to claim a part of the ‘þingfararkaup’. Another explanation could be that it was important to him that the ratio between the size of the population and men nominated in different parts of his realm was similar. No information about the size of the population in Gulating is available, but a conservative estimate is that it was at least three times as large as the population of Iceland in about 1300.

The absolute minimum of delegates to the ‘Alþingi’ was c.100. They were the two lawmen, the local delegates, sheriffs and other royal officials (‘valdsmenn’) plus their discerning (‘skilríkir’) lawful agents (‘umboðsmenn’). In addition, there were 12 ‘skynsamir lærðir menn’ appointed by the bishops, four from the Northern Quarter, two from the Eastern Quarter, four from the Southern Quarter and two from the Western Quarter.³³ However, when important issues were addressed, the number of men at the ‘Alþingi’ was significantly higher.

The ‘Alþingi’ was the most important arena for communication between the king and his Icelandic subjects. This can clearly be seen in King Håkon V’s amendments (*Réttarbót Hákonar konungs háleggs um að menn sæki lögþingi*) from 1313 which ordered Icelanders to meet at the General Assembly. If they did not, then the lawmen or their ‘lénsmenn’ were not allowed to declare what was law.³⁴ This amendment was a reaction to the Icelanders ceasing to meet at the ‘Alþingi’ in protest of the king’s request for higher taxes, increased centralisation and, in 1301, Norwegians taking over some key positions in the Icelandic administrative system.

This proved to be a good way to put pressure on the royal administration. If the householders refused to meet, they made it extremely difficult for the royal administration to introduce new regulations and laws and inform people about them. It therefore became difficult for the king and his officials to rule the country. On the other hand, this situation was not beneficial for the householders either in the long run. Sentences could no longer be passed, which may have created social disturbance. The amendment from 1313 demonstrates the crucial role of the ‘Alþingi’ in ruling the country and that the king’s administrative system was in fact based on a close collaboration with the householders.³⁵ Therefore, the king had to give in and reduce the pressure he put on the Icelanders. In an amendment from 1314 (*Réttarbót Hákonar háleggs til Íslands um ýmsar breytingar á Jónsbók*), he

33 *Járnsíða*: 64. However, it is unclear what their function at the assembly was. (Magnús Stefánsson 1978: 137)

34 DI II no. 213 (10 June 1313); NgL III: 105–06; RN III no 267; *Jónsbók* (2004): 259

35 Jón Viðar Sigurðsson forthcoming, cf. Imsen 1990

made some substantial changes to *Jónsbók* in accordance with the wishes of the Icelanders.³⁶

Local assemblies

With *Jónsbók*, new local assemblies were introduced, and it can be argued that the assembly organisation introduced in 1281 was of greater significance for the householders than the one that existed before the 1260s. From now on, they played a more active and important part in local public life than they had done in the Free State period. The paragraph in *Jónsbók* concerning Assembly districts and commune business (*þing sokn ok hreppa skil*) states that

all the householders shall go to an assembly when the summon comes to their houses, except for those who have no help (*einwirkjar*) and are obliged to attend four assemblies only: an assembly where the king's letter is to be read; an assembly called to try or investigate cases of manslaughter; an assembly called in spring where taxes are paid; and an assembly which the commune councils call. When all the other assemblies meet, however, those who have no help may remain at home, if they wish. He is a man who works alone if the man who helps him with the work is younger than sixteen, whether he is his son or another's. Widows and householders who are not able-bodied shall go to the assembly only if they wish to, but all other householders shall go to the assembly when the summons comes to their houses, otherwise, they must pay a fine of one ounce-unit to the king for not appearing when summoned.³⁷

Due to lack of relevant documentation, little is known about the different local assemblies and whether they functioned in accordance with the law. The assemblies at which the king's letters were to be read must have been organised ad hoc; not many such letters came to Iceland. It was probably the sheriff who summoned

36 DI II no. 215 (14 June 1314); *Jónsbók* (2004): 315–17; Björn Þorsteinsson and Sigurður Línal 1978: 86–88

37 *Jónsbók* (2010): 151. 'skulu bændur allir til þings fara þegar boð kemur til húss nema einwirkjar einir. Þeir skulu fjögur [30v] þing skyldir að sækja. Það þing sem konungsbréf skal upplesa og manndrápsþing og manntalsþing til jafnaðar, og það þing er hreppstjórn heyrir til. En öll önnur þing skulu einwirkjar heima sitja ef þeir vilja. Sá er einvirki er honum fylgir yngri maður til verks en sextán vetra, hvort sem hann er son hans eða annars manns. Ekkja og ófær bóndi skulu því aðeins til þings fara ef þau vilja, en allir bændur aðrir skulu fara til þings þegar boð kemur til bæjar, ella gjaldi þingviti eftir lögum.' *Jónsbók* (2004) 148. Cf. DI II, no. 155 (2 July 1294)

these assemblies, and they were probably held at the most central assembly locations in the regions. These assemblies, even though they were summoned infrequently, played an important communicative role. There the latest information and decisions from the king and his central administration concerning the country were given. In some cases, these letters must have been those ('verndarbréf') in which the king summoned Icelanders to Norway.³⁸ The importance of these assemblies can be seen in the fact that a letter was occasionally issued confirming that the king's letters had actually been read.

Copies were made of these letters and other important documents, such as amendments, agreements and church records ('máldagar').³⁹ Transcriptions of letters and documents were widespread, and many copies were made of the most important documents. This can be seen from a letter dated 18 July 1448, which confirms that five priests transcribed a transcript from 1343.⁴⁰ Examples of transcriptions included a letter from Hákon Eiríksson from 21 August 1374, where the king gave Skúli Þórðarson the estate Langadalur and other farms in Iceland⁴¹; a letter from King Hákon Magnusson confirming these gifts⁴²; and a letter of provent.⁴³ These transcriptions were issued at Skálholt, and the episcopal sees at Skálholt and Hólar functioned as 'national archives' for important royal letters and documents. Letters and documents have also been transcribed in monasteries, wealthy churches and farms where the secular elite lived or which they managed, many of which were householder churches ('bændakirkjur').⁴⁴

Assemblies called in cases of manslaughter ('manndrápsþing') were summoned by the sheriffs. No information is available about the number of people killed in Iceland in the period c.1280–1450. The Icelandic annals only occasionally mention homicide, and even though only a fraction of the total number of murders are mentioned, it is safe to conclude that 'manndrápsþing' were not often called. It is unclear where such assemblies were organised, but they probably took place at assembly sites near the place where the killing had happened or in the vicinity of the farm where the defendant lived.

38 DI III, no. 177 (1 July 1365)

39 DI V no. 20 (1442)

40 DI IV no. 789 (18 July 1448); DI IV no. 678 (18 February 1443). Cf. DI III no. 172 (21 January 1364); DI III no. 601 (13 July 1409)

41 DI III no. 234 (21 August 1374)

42 DI III no. 238 (13 March 1375)

43 DI III no. 642 (5 November 1415)

44 For example, DI III no. 328 (23 April 1385); no. 366 (28 April 1389); no. 399 (13 April 1393); no. 527 (21 July 1398); no. 562 (1401); no. 601 (13 July 1409); DI II no. 310 (26 February 1417)

Assemblies called to pay taxes ('*manntalsþing*') were probably organised annually, most likely in the period 15 May to 15 June. At these meetings, sheriffs collected taxes, verdicts were given and judicial registration took place.⁴⁵ Where these assemblies were held is unknown.

The '*hreppr*' was the most important local institution in Iceland in the Middle Ages. There is some uncertainty about when the system was introduced, but they probably date to the middle of the tenth century. The '*hreppr*' was independent geographical units led by five commune leaders, and had self-government in a number of internal matters. The number of '*hreppr*' around 1300 is unknown, but around 1700 it was approximately 165, and much indicates that the number has not changed much over this period.⁴⁶ At the commune assemblies (*þing* er *hrepstjórn* *heyrir til*), matters concerning the communes were discussed, without interference from the sheriffs. These assemblies were probably organised three times a year at central locations in the communes. Commune assemblies are not mentioned in *Grágás*, however, commune meetings ('*hreppsfundir*') are.⁴⁷ By converting these meetings into assemblies and giving them a place in the assembly organization, all householders in the country became members of a local public, which was a consequence of the monarchic state. There can hardly be any doubt that these commune assemblies were of great importance to the local population. For the householders the '*hreppr*'-assemblies were probably the most important of all the local assemblies. At the '*hreppr*'-level local issues were dealt with; for example, looking after the poor, which was communes' main task, settling of minor local disputes, and decided how common land should be used.

There were three-commune assemblies ('*þriggja hreppa þing*') too, which are not mentioned in *Jónsbók*. The first time we hear about them is in the so-called *Árnesingaskrá* from 1375 (a letter from the best men and the common people in Iceland to the King).⁴⁸ At these assemblies, the sheriffs were to read their letters. These must have been in reality the king's letters. These three-commune assemblies might have taken over the function of the assemblies where the king's letters were to be read. Therefore, the introduction of the three-commune assem-

45 Björn Þorsteinsson and Sigurður Línal 1978: 74

46 Lýður Björnsson 1972: 89–93, 117

47 *Grágás*: 535–36

48 DI II no. 189 (20 July [1306 or 1375]), the correct dating is to the year 1375, see DI IX no. 7 (20 July 1375): 'Ok svá at þat haldist þá lýsi þeir [sheriffs] bréfum sínum um sinn á þriggja hreppa þingi í hverjum fjórðungi um alt landit, ok riði við tíunda mann á sjálfs síns kostnað til hesta ok járna, ok riði handgeingnir ok bændr ok lögmaðr, ef hann er í nánd, til þeirra þinga at því betr gangi konungsins réttir at lögum.'

blies shows a development towards a reduction of assemblies, which must have saved both time and money for the householders and the royal administration. The number of communes in the country was, as mentioned, roughly 165 around 1700,⁴⁹ that is, the number of three-commune assemblies was approximately 55. It was the sheriffs who summoned the three-commune assemblies. Verdicts and decisions taken there could be appealed to the ‘Alþingi’ or to the king. The three-commune assemblies were usually organised at the sites of the old assemblies.

What ‘all other assemblies’ (‘öll önnur þing’) refers to is unclear, but this phrase probably includes the assemblies (‘leið’ or ‘leiðarþing’) which were held each autumn. Sheriffs were to disseminate information about events from the ‘Alþingi’ at these assemblies, especially concerning issues that affected men in their sheriffdom.⁵⁰ The sheriff should also report to householders that the ‘Alþingi’ would be assembled at Þingvellir next summer.⁵¹ This formality was necessary to make sure that cases from the local assemblies could be appealed to the law council. Moreover, it probably refers to ‘kirkjusóknarþing’ as well, which were organised for householders to ‘bú sitt út leysa’.⁵² Mobility among householders was high, and thus it is not unlikely that these assemblies were organised rather frequently. One of the amendments from the last decades of the thirteenth century refers to ‘sóknarþing’, which were used to ‘sækja’ (prosecute) and ‘flytja’ (present) cases, the phrase probably also includes the regional assemblies (‘héraðsþing’) too. *Jónsbók* does not mention the number of such assemblies, but it is likely that, geographically, they had the same boundaries as the 12 assembly regions. The locations for many of these regional assemblies (e.g. on Hegranes, in Þorskafjörður and on Þórsnes) were the same as for spring-time assemblies in the Free State period.⁵³

The paragraph about the number of local assemblies in *Jónsbók* is based on a similar paragraph in the Land-law, which in its turn takes a similar paragraph from the Gulating law as a model. The law of Gulating states that those who work alone on their farms without the help of adults (‘einvirkjar’) should attend three assemblies: ‘the king’s [own] assembly, the muster assembly, and an assembly called to deal with manslaughter; from all other assemblies those who work alone may be absent’.⁵⁴ In the *Landlaw*, the number of assemblies those working alone

49 Björn Lárusson 1967: 34; Lýður Björnsson 1972: 117

50 Cf. *Járnsíða*: 66

51 *Jónsbók* (2004): 86

52 *Jónsbók* (2004): 181

53 *Jónsbók* (2004): 156, 186, 187, 189, 192, 287; *IslAnn*: 52, 74, 148, 152, 200, 213, 299; Björn Þorsteinsson and Sigurður Línal 1978: 73.

54 G: 131, ‘manndraps þing. oc konongs þing. oc manntals þing. oll þing onnur skolo einvirkjar heima sitia.’

should attend increased to four: ‘the king’s [own] assembly, an assembly called to deal with Manslaughter; assembly calling for the payment of taxes, the muster assembly, shall all legally appointed med attend. From all other assemblies, may those who work alone be absent.’⁵⁵ The difference between the *Gulating law* and the *Land-law* is the weapon assembly (‘uapna þing’), where the householders should muster with their weapons for inspections – this was an important part of the levy system (‘leiðangr’, the official fleet levied by the king). The reason why the weapon assemblies were not included in *Jónsbók* is that Icelanders were not expected to participate in the defence of the realm. In *Jónsbók*, the commune assemblies replaced the important weapon assemblies. In addition, *Gulating law* and the *Land law* mention the king’s assembly, while *Jónsbók* has assemblies to read the king’s letters. King’s assemblies were summoned by the king, and it is likely that they had the same function as the assemblies in Iceland where the king’s letters should be made known, that is, to inform the householders about important matters concerning the kingdom and the local community.

The new code brought a multitude of assemblies to the Icelanders, which can be seen in the table.

<i>Grágás</i>	<i>Jónsbók</i>
‘Alþingi’	‘Alþingi’
Spring assemblies	
Autumn assemblies	Autumn assemblies
	Commune (‘hreppr’) assemblies
	Assemblies where the king’s letters were read
	Assemblies in cases of manslaughter
	Assemblies for paying taxes
	Parish assemblies (‘kirkjusóknarþing’)
Héraðsþing	Regional assemblies (‘héraðsþing’)
	Three-commune (‘hreppr’) assemblies
	Sóknarþing

⁵⁵ L VII: 56, ‘konungs þing. manndraps þing. manntals þing til iafnaðar. oc uapna þing. þat skolo allir retneemir menn sokia. En oll annur þing skolu einvikiar heima sita ef þeir uilia.’

The increasing number of assemblies was due to the introduction of the Norwegian assembly organisation. Thus, all Icelandic householders were incorporated into the new state as royal subjects co-responsible for running local public life.

Conclusion

The increasing number of assemblies in Iceland after the Norwegian takeover is not a phenomenon specific to Iceland. Europe ‘experienced a flowering of assemblies’ in the period between 1250 and 1500.⁵⁶ The number of assemblies in Iceland was, nevertheless, substantially higher than in other parts of Europe. This can be explained partly as a consequence of the settlement pattern and the lack of secular administrative centres in Iceland. The single farm was the main feature of the settlement of Iceland, not the city, the town and the village, as in almost all other parts of Europe.⁵⁷ In Iceland, where there were no cities, towns and villages, and in fact no permanent centres for the royal administration, the solution was to increase the number of local assemblies and thereby create a flexible system which satisfied the needs of the population.

The ‘Alþingi’, assemblies for paying taxes, autumn assemblies and commune assemblies were probably held regularly once or twice a year. Then we have the ad hoc assemblies (assemblies where the king’s letters were read, assemblies to investigate cases of manslaughter, ‘kirkjusóknarþing’, regional assemblies, three-commune assemblies), which could be summoned at short notice. This assembly organisation made it possible for the king and the royal administration to deal with offences and to inform the householders about all important issues. The ‘Alþingi’ was the key element in this system. All information, both internal and from abroad, was usually introduced there. It was then transmitted further throughout the population at the autumn assemblies. These assemblies were probably the most important local element in the lines of communication between the king and his subjects. Even though only a few of the assemblies ‘officially’ had the function of disseminating information, all assemblies must have been used for this purpose. Therefore, there is good reason to claim that the householders in Iceland were rather well informed about the ‘state of the union’ public matters.

When dealing with offences, it is likely that the assemblies functioned in accordance with *Jónsbók*. The number of minor issues settled at the local assemblies

⁵⁶ Stasavage 2011: 11–12. As opposed to the practice often found in the self-governing cities, it was, however, ‘rare to see assemblies meet annually’ in the territorial states. (Stasavage 2011: 13).

⁵⁷ Jón Viðar Sigurðsson 2010: 68

was probably large. Judgments from these assemblies could be appealed to the 'lögrétta' at the 'Alþingi', and if there was still a disagreement about the judgment, it was the king who gave the final verdict. However, it must be emphasised that the sources only rarely provide a glimpse of how disputes were settled in this period.

The flexibility embedded in the assembly system must also have allowed different types of assemblies to be organised simultaneously. This is probably the reason for the introduction of the three-commune assemblies. Assemblies were an inextricable part of Icelandic society from the Viking Age onwards. They were an important arena for settling disputes and offences. They were also important for disseminating news, and fathers could find partners for their children there. Taken together, these features ensured that assemblies were a key element of the old Icelandic social structure upon which the new regime could be built.

Bibliography

- Axel Kristinsson, Embættismenn konungs fyrir 1400, *Saga* 36 (1998): 113–152
- Barnwell, Paul S. & Mostert, Marco, Political Assemblies: Introduction, Political assemblies in the earlier Middle Ages. Ed. by Paul S. Barnwell & Marco Mostert, Turnhout 2003: 1–10
- Björn Lárusson, *The Old Icelandic Land Registers*, Lund 1967
- Björn Þorsteinsson & Guðrún Ása Grímsdóttir, Norska öldin, *Saga Íslands*. Ed. Sigurður Línal, Reykjavík 1989: 59–258
- Björn Þorsteinsson & Sigurður Línal, Lögfesting konungsvalds, *Saga Íslands III*. Ed. by Sigurður Línal, Reykjavík 1978: 19–108
- Cleasby, Richard & Gudbrand Vigfusson, *An Icelandic-English Dictionary Based on the Ms. Collections of the late Richard Cleasby Enlarged and Completed by Gudbrand Vigfusson*, Oxford 1874
- DI = *Diplomatarium Islandicum. Íslenzkt fornbréfasafn I–XVI*. Ed. by Jón Sigurðsson et al., København & Reykjavík 1857–1972
- Einar Laxness, *Íslandssaga A–Ö*, Reykjavík 1995
- G = *Den ældre Gulathing-Lov. Norges gamle Love I*. Ed. Rudolf Keyser et al., Christiania 1846
- Grágás = *Grágás. Lagasafn íslenska þjóðveldisins*. Ed. Gunnar Karlsson et al., Reykjavík 1992
- Hagskinna = *Hagskinna sögulegar hagtölur um Ísland*. Ed. Guðmundur Jónsson & Magnús S. Magnússon, Reykjavík 1997
- Helgi Þorláksson, Ríkisvald gegn þingvaldi: Fulltrúar vaxandi ríkisvalds takast á við fulltrúa þingvalds, *Nordens plass i middelalderens nye Europa. Samfunns-*

- ordning, sentralt og periferier*. Ed. Lars Ivar Hansen et al., Stamsund 2011: 105–123
- Helle, Knut, *Norge blir en stat 1130–1319*, Handbok i Norges historie 3, Bergen 1974
- Imsen, Steinar, *Norsk bondekommunalisme: fra Magnus Lagabøte til Kristian Kvart. Del 1: Middelalderen*, [Trondheim] 1990
- Irlenbusch-Reynard, Michael, *Thingstätten als Erzählelemente in den Íslendingasögur und Íslendingaþættir*, Universitetet i Bergen, Bergen 2005
- IslAnn = *Íslandske Annaler indtil 1578*. Det Norske historiske Kildeskriftfonds skrifter 21. Ed. by Gustav Storm, Christiania 1888
- Járnsíða = *Járnsíða og kristinréttur Árna Þorlákssonar*. Ed. Már Jónsson et al., Reykjavík 2005
- Jón Jóhannesson, *Íslendinga saga II. Fyrirlestrar og ritgerðir um tímabilið 1262–1550*, Reykjavík 1958
- Jón Sigurðsson, Lögsögumannatal og lögmanna á Íslandi með skýringargreinum og fylgiskjölum eftir Jón Sigurðsson, *Safn til sögu Íslands og íslenskra bókmenta að fornu og nýju* 2. Ed. Jón Sigurðsson et al., Kaupmannahöfn 1886: 1–250
- Jón Viðar Sigurðsson, The Norse Community, *The Norwegian domination and the Norse World c.1100–c.1400*. Ed. Steinar Imsen, Trondheim 2010: 59–73
- Jónsbók (2004) = *Jónsbók. Lögbók Íslendinga hver samþykkt var á alþingi árið 1281 og endurnýjuð um miðja 14. öld en fyrst prentuð árið 1578*. Sýnisbók Íslenskrar alþýðumenningar 8. Ed. Már Jónsson, Reykjavík 2004
- Jónsbók (2010) = *Jónsbók: the laws of later Iceland: the Icelandic text according to MS AM 351 fol. Skálholtsbók eldri*. Bibliotheca germanica Series nova. Ed. Jana K. Schulman, Saarbrücken 2010
- KLNM = *Kulturhistorisk leksikon for nordisk middelalder I–XXII*. Ed. Finn Hødnebo et al., Oslo, 1956–78 (2. oppl. 1980–82)
- L = *Den nyere Lands-Lov*. Norges gamle Love II. Ed. Rudolf Keyser et al., Christiania 1846
- Lýður Björnsson, *Saga sveitarstjórnar á Íslandi I*, Reykjavík 1972
- Magnús Stefánsson, Frá goðakirkju til biskupskirkju, *Saga Íslands III*. Ed. by Sigurður Línal, Reykjavík 1978: 109–257
- NgL = *Norges gamle Love I–V*. Ed. by Rudolf Keyser et al., Christiania, 1846–95.
- Ólafur Lárusson, *Lög og saga*, Reykjavík 1958
- Pantos, Alikí & Sarah Semple ed., *Assembly places and practices in medieval Europe*. Dublin 2004
- Quillet, Jeannine, Community, Counsel and Representation, *The Cambridge*

- History of Medieval Political Thought c.350–c.1450*. Ed. J. H. Burns, Cambridge 1988: 520–72
- Reuter, Timothy, Assembly politics in Western Europe from the eighth century to the twelfth, *The medieval world*. Ed. Janet L. Nelson & Peter Linehan, London 2001: 432–50
- RN = *Regesta Norvegica I–VII*. Ed. by Sverre Bagge et al., Oslo 1978–1997
- Sigríður Beck, *I kungens fránvaro. Formeringen av en isländsk aristokrati 1271–1387*, Göteborg 2011
- Stasavage, David, *States of credit: size, power, and the development of European polities*, Woodstock 2011

Chapter 12: Feuds in fact and fiction in late medieval Iceland

Hans Jacob Orning

The chaotic society

Fifteenth-century Iceland has suffered a bad reputation among Icelandic historians. In *Saga Íslands* V, Björn Þorsteinsson and Guðrún Ása Grímsdóttir discuss internal political and social conditions under the heading ‘Innanlandserjur’. Here the regrettable lack of central power is stated, which leads to discord of all kinds. A row of conflicts is listed, with a focus on their violent outcome. The overall conclusion is that the central power was still not strong enough to prevent the urges of blood revenge to surface, succinctly expressed in the headline ‘Þung er þessi plága’.¹ Even officials and clerics could not be safe from violent attacks.² The church was no better. In the first half of the fifteenth century, the pope delegated the appointment of bishops to kings. This led to corrupt conditions and prolonged vacancies.³ The chapter ends with a contemporary verse wishing for a better world to come.⁴ The poet would be heard, because state power became stronger after the Reformation, and gradually put an end to chaos.

This image of a society on the verge of dissolution due to the weakness or breakdown of central power is a familiar one, going back to Hobbes, who described stateless society as a ‘warre of every one against every one’. This view has almost been a self-evident truth in medieval history with such pervasive repercussions that it is difficult to venture beyond it in order to investigate how decentralised societies operate more concretely. However, the last decades have witnessed two movements contributing to an alternative image of societies with weak central power. The first one started as a corrective to the notion of a ‘feudal anarchy’ in French history between the Carolingian demise and the growth of Capetian kingship from the twelfth century onwards. Instead of studying this period in terms

1 Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 97

2 Ibid.: 79–87

3 Jón Viðar Sigurðsson 2003: 133–34

4 Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 97–100

of a breakdown of order, other forms of integrative mechanisms in society were highlighted, in which feuds played a decisive role.⁵ Soon this anthropologically inspired approach spread to the study of Freestate Iceland, which combines the unusual features of being a stateless society with an affluence of sources.⁶

The second movement elaborating the concept of social order emanates from studies of the late medieval period. Previously there was a strong tendency to view feud as an antithesis to state formation, because it was a practice contradicting and challenging central enforcement of law and order. In the last decades, this view has been challenged. This is partly a result of an empirical observation: Feuds often tend to continue and even prosper under the auspices of a central power. In the late Middle Ages, noble feuds were widespread throughout Europe.⁷ Such feuds did not primarily persist because they were old remnants from a bygone stage that the state could not control, but because they played an important and even constructive role in keeping rivalry between noblemen within acceptable bonds, and at the same time ensuring that the king's position remained untouched. Bjørn Poulsen has argued that feuds in late medieval Denmark formed an integral part of normal legal procedure, and that it even was a constituting element of nobility itself.⁸ Noble feuds were conducted among more limited segments of society and involved more non-lethal violence than before, but preserved the same basic structure and dynamic.⁹ Another asset for the king was that feuds could bring income. The king was part of the feud in his capacity as the keeper of the peace, who had to be compensated in cases of breaches. Hence, an important revenue opened up. Steinar Imsen has demonstrated how legal processes in case of homicide involved the king on a routine basis in late medieval Norway.¹⁰ Helgi Þorláksson formulates the relationship between state power and feud in this way: 'Feud existed alongside the stronger powers, state, laws and the courts.'¹¹ Hence, feuds are closely linked to the legal culture of late medieval Europe. This means that an investigation of how the legal field functions must take into account the ways in which feuds were processed in the leading strata of society. This is what this chapter is about, using

5 Overviews of this tradition are given in Brown and Górecki 2003; Esmark 2006; Orning et al. 2010; Esmark et al. in print

6 See, for instance, Byock 1988; Miller 1990; Jón Viðar Sigurðsson 1999. Jón Viðar Sigurðsson 2000 on the historiography

7 Netterstrøm 2007

8 Poulsen 2007: 92, 99–100

9 Netterstrøm 2007

10 Imsen 2009

11 'Feiden levde side om side med den sterkere statsmakten, lovene og domstolene.' Helgi Þorláksson 2007a: 27

fifteenth-century Iceland as a case. The focus will therefore not be on the formal legal framework or on lawsuits, but on how people acted out conflicts in ways that they perceived of as legitimate, not to say ‘legal’.

Feud in Iceland

Feuds have been much in vogue for the last decade, after a slumbering existence since Otto Brunner’s and Max Gluckmann’s seminal studies ages ago. Two anthologies on feud appeared in Scandinavia in 2007, and since then two international anthologies have been published with feud as the main topic.¹² A main issue in these books is how – and whether – to define feud. Several scholars have proposed to skip the term because it is too broad and imprecise, and because a stricter definition will hardly apply to medieval material.¹³ This perspective has not gained much support in the aforementioned anthologies. Instead a discussion has been conducted on how strictly a feud should be defined. A problem with definitions of feud is that they tend to become straitjackets in analysing a phenomenon which most scholars agree is characterized by a wide variety of how it is manifested. Hence, most scholars tend to opt for a wide definition, or what William Ian Miller terms ‘distinctive features’.¹⁴ Paul Hyams launches a broad definition of feud in *Rancor and Reconciliation*, and writes about a ‘feud culture’ or ‘vengeance culture’.¹⁵ In *Vengeance in the Middle ages*, Throop and Hyams argue that a definition should be avoided, drawing on Pierre Bourdieu, and limit themselves to provide a ‘rough account of the practice of medieval English men and women’.¹⁶ Basically, this approach is in line with Jeppe Buchert Netterstrøm and Helgi Þorláksson, who are careful to ‘despecify’ their definitions in their introductory and methodological articles in the aforementioned Nordic anthologies.¹⁷

Even if feud definitions are legion, William Ian Miller’s highly influential definition of feud in *Bloodtaking and Peacemaking* from 1990 is still a suitable point of departure. Miller proposes the following elements as part of a feud:

12 Opsahl 2007; Netterstrøm 2007; Throop and Hyams 2010; Tuten and Billado 2010

13 Sawyer 1987; Halsall 1998

14 Miller 1990: 180

15 Hyams 2003: xvii, xix. 8–9

16 Throop and Hyams 2010: 160. ‘Definitions, as he [Bourdieu] puts it, falsely objectify the subjective. In matters of life and death, men do not proceed mechanically by following definitions. [...] They act subjectively, as seem natural to them, doing what feels right.’ (Ibid.) At p. 155 they argue for a ‘non-definition’.

17 Netterstrøm 2007; Helgi Þorláksson 2007a; Helgi Þorláksson 2007b

- A hostile relationship between groups, in which there is collective liability
- Norms of honour controlling and limiting violence
- Keeping of scores according to a rough principle of balance, including settlement¹⁸

Many of these points may be discussed on a general basis,¹⁹ but here I will limit myself to address those that are relevant to the Icelandic context. Jón Viðar Sigurðsson has argued that the duration of feuds could be much longer than Miller suggests.²⁰ Helgi Þorláksson on the other hand underlines the brevity of feuds.²¹ In my opinion, this divergence has to do with how feuds are defined. Helgi Þorláksson (and Miller) defines feud as a conflict which is triggered by some specific issue which ends when a settlement is reached.²² Jón Viðar Sigurðsson prefers a wider definition of feud that incorporates rivalries that persist beyond individual settlements, which often functioned only to interrupt tension for a short while.²³ Moreover, Helgi Þorláksson objects to Miller's group criterion by stating that individuals can also conduct feuds.²⁴ I think that both these objections can be related to a peculiarity of Icelandic feud, and indeed society, as compared to the classical 'feud societies' around the Mediterranean, namely in that kinship was bilateral. A woman did not pass over from her biological family to her spouse's family upon marriage, but belonged to both families.²⁵ This kinship structure has been extensively studied in the last decades, but its impact on the feuding pattern has not always been properly acknowledged. In my view, it justifies another factor to be added to the list of defining features of feuds:

18 Miller 1990: 179–181. Originally this was a more voluminous definition in nine points. I have reduced them to three points, subsuming the original meaning (in my opinion).

19 Netterstrøm argues that reciprocity may be less than in this model, and that violence need not be lethal (Netterstrøm 2007: 53–54). Throop and Hyams add an emotional and ritual dimension to feud (Throop and Hyams 2010). More fundamentally, these definitions differ from Brunner's in that they insist that regaining honour and obtaining a settlement is normally the goal by entering into a feud, not to destroy the enemy, as Brunner held.

20 Jón Viðar Sigurðsson 1999: 155–56

21 Helgi Þorláksson 2007b: 73–74

22 Ibid.: 74

23 Jón Viðar Sigurðsson 1999: 156–70

24 Helgi Þorláksson 2007b: 71–72

25 Vestergaard 1988; Hansen 1999

- Groups are variable and frequently change in size and composition

While the Icelandic family sagas from the Freestate period have been widely studied as vehicles of a feud society which lacked central power, far less attention has been devoted to changes in the Freestate period, not to mention the situation after Iceland became part of Norway in 1262–64. Jón Viðar Sigurðsson has underlined the changes in Icelandic politics from the Saga Age to the Sturlung Age, consisting in a concentration of power that paved the way for the Norwegian king.²⁶ Randi Wærdahl and Hanne Monclair have demonstrated how the importance of horizontal friendship grew at the expense of vertical friendship, and how redistributive feasts largely disappeared during the thirteenth century.²⁷ In Jón Viðar Sigurðsson's words, after 1262–64 power came from above, not from below. Henceforward, it emanated from the king, and the traditional bond between chieftain and peasants deteriorated.²⁸

It is no novelty that conditions in Icelandic society changed after the Icelanders swore allegiance to the Norwegian king in 1262–64. An earlier generation of historians saw this change as the ultimate catastrophe of Icelandic society.²⁹ Today's historians try to avoid national bias, but the nature of the transition is still debated. Two doctoral dissertations have contributed with more specific knowledge of the political processes in the wake of the Norwegian takeover. Randi Wærdahl has demonstrated how the elite had to compete for royal offices after Norwegian laws were implemented, yet without furnishing a sharp break in governance as compared to that in the Sturlung Age.³⁰ First, the old elite of *goðar* continued to rule to a large degree. Second, the state apparatus was a flexible one, which built on cooperation with the institutions of the local communities, in line with what has been termed 'peasant communalism'.³¹ Hence, the division did not go between royal officials and those who did not hold such positions, but between elite and peasants. In Wærdahl's words, 'the local elite continued to govern itself'.³² Sigriður

26 Jón Viðar Sigurðsson 1989. Cf. also Gunnar Karlsson 2000

27 Monclair 2003; Wærdahl 2006

28 Jón Viðar Sigurðsson 2007: 96

29 Jón Jóhannesson 1956; Einar Ol. Sveinsson 1944. See Byock 1992 on the nationalistic bias

30 Wærdahl 2006: 142–49. The difference between the Sturlung Age and the Saga Age is nevertheless substantial, consisting of the abortion of vertical bonds, as mentioned previously (see also Wærdahl 2007: 187–91).

31 Wærdahl 2006: 172–81; Imsen 1990.

32 Wærdahl 2006: 254. Unlike Norway, the highest royal officials participated in local politics (176–81), and unlike other tributary lands, in Iceland the indigenous elite were allowed to take over royal offices.

Beck's conclusions are mainly in line with Wærdahl's, in that the indigenous elite continued to rule on behalf of a distant royal power. As the vertical bonds of the (early) Freestate were supplanted by horizontal bonds, the elite developed a stronger cultural and political community.³³ A sign of this elite formation is the production of manuscripts of *fornaldarsögur* and *riddarasögur* which celebrated their values. In these sagas, nobles may struggle fiercely, but they always end up as friends in settlements confirming and strengthening the norms of this noble community.³⁴

Both Randi Wærdahl and Sigríður Beck stop their investigations around 1400. The same is true of Sverrir Jakobsson's and Jón Viðar Sigurðsson's analyses of Icelandic literature and society.³⁵ Several characteristics have contributed to the dominant view of the following century in Iceland as a period of chaos, apart from the allegedly lawless violence of the period reviewed in the introduction. First, the plague finally came to Iceland in 1402–04 and again in 1494–95, claiming a high death toll. Second, English merchants and fishermen appeared in Iceland, earning the period the label 'enska öldin'.³⁶ The English fishing trade in Iceland put the island in the midst of a power struggle in the north Atlantic, and the union kings conducted several 'cod wars' against England. In line with these rivalries, Icelandic politics has been interpreted as a struggle between Danish and English interests.³⁷ Finally, the fifteenth century is often regarded as the 'empty' century of Icelandic history. Around 1430, annals stop being written, only to resurface in the middle of the sixteenth century. Thus, it is harder than ever to grasp a picture of the main trends during this period.

The only alternative vision of fifteenth-century Iceland has been provided by Helgi Þorláksson in a short article, in which he analyses the institution of 'heimreið' (home riding).³⁸ Here he argues that it is futile to study Icelandic politics from the angle of Danish or English interests, as such interests were criss-crossing in Iceland. Moreover, conflicts were not as chaotic as they may seem. Surely there was an abundance of homicides and violence in this period, but these

33 Sigríður Beck 2011: 188–190, 235–46

34 Beck 2011: 117. This way of using fantastic literature as sources to the formation of an aristocratic identity has also been pursued by Henric Bagerius, who argues that they created a vision of an aristocratic society that functioned to cement their identity (in addition to bringing Iceland closer to Europe). Bagerius 2009: 42, 73

35 Sverrir Jakobsson 2005; Jón Viðar Sigurðsson 2010

36 Björn Þorsteinsson 1970

37 Björn Þorsteinsson 1970, shorter in Björn Þorsteinsson 1985, 117–43

38 Helgi Þorláksson 2004

instances show some regularities that are not concomitant with lawless chaos. Home riding can be classified as a sort of feud. First, it is a ritual for demonstrating power, involving violence or the threat of using it. Second, it forms part of rivalries between roughly equal groups. Third, it is concerned with honour, and with settling scores by arriving at settlements that could bring satisfaction to both parties. It differs from Freestate feuds in that the king was involved and in that the participants had armed followers. On the other hand, in both these aspects, home riding is more in line with contemporary European feuds.³⁹

Helgi's article demonstrates that even if Icelandic magnates operated in a context where they had to relate to Union kings and their officials (which they often acted as), the Church and its representatives, as well as to unruly English traders, they did not stop rivalling against one another for power and prestige. The challenge is to flesh out whether and in what way conflicts were conducted and perceived of as feuds. In the rest of this chapter, I will approach this question in a twofold way. First, it requires a closer investigation of the diplomas of the period and the annals.⁴⁰ This will be done in the next few pages. Second, in order to get beyond this thin layer of sources, I shall also use saga manuscripts written in this period as remnants of how contemporary feuds were viewed. Here I shall take as point of departure a cluster of manuscripts probably commissioned by Margrét Vigfúsdóttir, who held a key position in the power struggles of her day. By analysing how conflicts were conducted in these manuscripts, and by relating these findings to contemporary conflicts into which this family was embroiled directly or as a close bystander, I hope to bring out a more profound understanding of how conflicts were perceived and handled in this period.

Fifteenth-century politics, as seen through the eyes of Margrét Vigfúsdóttir

Margrét Vigfúsdóttir will constitute the prism through which fifteenth-century Icelandic history and literature is viewed in this section. She was born in 1406 into one of Iceland's leading families, and died in 1486. Her grandfather Ívar Hólmr Vigfússon became 'hirðstjóri' (retinue leader, in practice the king's governor of Iceland) in 1354. He was the first one who obtained this office on the premises

³⁹ Ibid

⁴⁰ The only historians who have worked extensively with these diplomas are Arnór Sigurjónsson in *Vestfirðinga saga* (Reykjavík 1975), and Einar Bjarnason in *Islenskir ættstuðlar* in three volumes (Reykjavík 1969–72). These works have been important for my own investigations.

that he should pay an annual sum for the next three years.⁴¹ He also figured as nuntius, collector of papal revenues in Iceland, a decade later.⁴² His son did no worse. Vigfús Ívarsson was appointed ‘hirðstjóri’ by Queen Margrete in 1389.⁴³ In 1397, he married a Norwegian woman, Guðrid, from the Talgje family, which may have roots going back to King Håkon Håkonsson.⁴⁴

Vigfús had one son, Ívar Hólmr, who apparently took over his father’s position. In 1431, he was present at the alþingi when the Icelanders stated their loyalty to King Erik of Pommern,⁴⁵ but two years later, he was killed in a fire. According to the later *Gottskalks annal*, the responsibility lay with Bishop Jón Gerreksson, whose allegedly illegitimate son had proposed to Ívar’s sister Margrét, and as a revenge for her rejection, had tried to burn them alive. Margrét escaped, and promised to marry the man who avenged the misdeed. The task fell on Þorvarðr Loftsson, who drowned Bishop Jón in the river Brúará and married Margrét.⁴⁶ The story smacks of legend and story-telling, and it was surely embellished before it was put into writing more than a century later. However, Arnór Sigurjónsson considers it to contain a historical core, a view which has been supported by other historians.⁴⁷ Þorvarðr and Margrét settled at *Möðruvellir fram*, a large farm in the valley of Eyjafjörðr in northern Iceland, which formed part of Þorvarðr’s patrimony. Þorvarðr died only ten years after their marriage, in 1446. For the next 40 years, Margrét remained a widow at Möðruvellir fram. She married off their three daughters in a joint wedding in 1463, and she probably fostered her deceased brother Ívar’s children Bjarni and Guðmundr.⁴⁸

In what kind of conflicts did Margrét become enmeshed? She and her family had to handle conflicts involving the king, Englishmen and the church. As a nine-year-old girl, she travelled to England with her family under unclear circumstances. The annals write that Vigfús sailed to England with some English ships which had raided the coast of Iceland,⁴⁹ and this has been interpreted as a sign that Vigfús had lost his office due to improper favours to English merchants.⁵⁰ This is

41 Isl. Ann., 276, 356. Wærdahl 2006: 226–27

42 Isl. Ann., 227. The position was taken up by his son Vigfús, DI III, 563

43 Isl. Ann., 284

44 On the differing opinions on this issue, see Løberg 2000. Margrét had a sister who married in Norway, DI 5, 697; DN I, 877

45 DI IV, 506. Helgi Þorláksson’s article in this volume elaborates on this resolution at the alþingi.

46 Isl. Ann., 370

47 Arnór Sigurjónsson 1975: 93–101. See a more modest interpretation in Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 58–59

48 DI V, 331. Sanders 2000: 47

49 Isl. Ann., 290, 292

50 See i.a. Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990

supported by the fact that his widow had to answer to the king for property which her husband had forfeited.⁵¹ However, the fact that Vigfús' son Ívar was given high royal offices and met King Erik implies that grudges cannot have been so profound. The relationship with the English also varied. While Margrét's father was accused of having too close a relationship with them, it probably became more strained after Björn Þorleifsson, who was married to a daughter of Loft, was killed by the English in 1467.⁵² Margrét's family also had conflicts with the church, as in connection with Jón Gerreksson, but here again the fronts were not stable. Margrét herself donated lavish gifts to churches in her surroundings during her lifetime, and her father-in-law Loft was a close friend of the bishop of Hólar.⁵³

As far as we know, Margrét was not directly involved in the political struggles taking place in northern and western Iceland, which shall be explored in the following pages. However, with her background and as the spouse of one of Iceland's mightiest men, she was deemed to have a central position in politics. We catch a glimpse of this when her nephew and foster son Bjarni became embroiled in conflicts between leading magnates.⁵⁴ What Margrét could not foresee (possibly) was that after her death her own farm would become the target of one of Iceland's most bitter inheritance struggles.⁵⁵

The all-pervasive rivalry in Margrét's time, at least in her rank of society, was not related to kings, bishops or Englishmen, but went along the lines of noble families. Around 1400, three families dominated Icelandic politics: Margrét's family (Vigfús), Loft Guttormsson with a centre at Skarð (the Skarðverjar) and Björn Einarsson in Vatnsfjörður, whose daughter Kristin married Þorleifr Arnason the Kolbeinstaðamenn.⁵⁶ A concrete expression of this dominance can be viewed in the intermarriages between these families, in particular the two latter ones, who were endowed with more surviving offspring than Vigfús.⁵⁷ Out of Loft and Þorleifr's

51 DI IV, 344

52 DI V, 441. Björn Þorsteinsson 1970: 204–12; Björn Þorsteinsson 1985: 130

53 Margrét was a lavish donor to churches nearby, DI V, 233–314 (XLII, XLIV–XLVI). See Arnór Sigurjónsson 1975: 93 on the close relationship between Loft and Jón Vilhjalmsson of Hólar

54 DI VII, 290. Arnór Sigurjónsson 1975: 136

55 DI VII, 315, 502. See Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 93–94 and Arnór Sigurjónsson 1967: 143–72 on this protracted legal case, called Möðruvallaháttur. This case is also interesting because the parts invoked different legal traditions in order to support their claims (*Jónsbók* vs Hákon 5's statute of 1313), and because the royal power proved to be very fluid in its views on the case. For the royal verdict, see DI VIII, 147

56 Wærdahl 2006: 240

57 The reduction of Margrét's family to second fiddle in this struggle undoubtedly owes to Vigfús' lack of surviving offspring compared to the families of Loft and Þorleifr. Out of eight children, only three survived childhood: Ívar, Margrét and Hólmfríðr. The latter married in Norway, and when Ívar

numerous children (eight and seven respectively), four were married to a member of the other family.⁵⁸ As mentioned, one son of Loftr was married to Margrét, and another remarried with Margrét's nephew Bjarni. While the eldest son of Þorleifr was unmarried, the remaining daughter married Guðmundr Arason, a man who had become extremely rich in a short time due to a combination of mighty allies (his father married the richest daughter in Vestfirðir as part of a settlement in 1394) and luck (his two wives died before him, leaving him all their inheritance).⁵⁹ Hence, these families were indeed interconnected in what Sigriður Beck would call a noble community.

Nevertheless, conjugal bonds did not prevent these families from incessant fighting and manoeuvring for positions and properties. Much of the rivalry came to evolve around the inheritance of Guðmundr Arason. Guðmundr's lucky stroke had helped him amass such wealth that it put him in the highest echelons of society, being the only 'outsider' married into Þorleifr's family. However, Guðmundr's position was vulnerable, as he did not have a solid family backing (his father died in 1421/22 when he was in his twenties, and his uncle a decade later, whereas his sister was rather hostile).⁶⁰ Moreover, as a newcomer he faced more difficulties than established magnates in his local leadership. Tensions and strife with the Húnvetningar entangled him in lawsuits, and other magnates were eager to intervene.⁶¹ Finally, marrying into a mighty family was not tantamount to receiving its support. In 1445, two brothers of Guðmundr's (now deceased) wife Helga, Björn and Einar Þorleifsson, raided him, and probably forced him to go abroad.⁶² That is the last we hear about Guðmundr, who surely must have hoped to get the king's

suffered an early death, much of the initiative of this family faded. Nevertheless, Margrét managed to keep the family together by fostering the sons of Ívar, and her husband's family participated in the direct struggle for hegemony. Margrét seems to have identified with her new family by choosing to stay at Möðruvellir farm, one of Loftr Guttormsson's main farms, for her entire life. She must have had close contact with Loftr's other children, not least the ones living nearby at Grund (Eiríkr), although it is impossible to follow the details of their relationship.

58 Arnór Sigurjónsson 1975: 52–57

59 Guðmundr's father Ari rose from rags through riches when he married the daughter of Þórðr Sigmundarson as part of a settlement in 1394. Through that he acquired parts of the wealth of the richest family in north-western Iceland, and when his wife died before him, he secured it for his own offspring. Moreover, a second wife brought him additional wealth. See Arnór Sigurjónsson 1975: 60–65. On the wedding between Guðmundr and Helga in 1423, see DI IV, 370. Vigfús hosted the wedding, *Isl. Ann.*, 287

60 Arnór Sigurjónsson 1975: 61–64, 175–77

61 Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 84–85; Arnór Sigurjónsson 1975: 64

62 DI IV, 725; V, 498. See Arnór Sigurjónsson 1975: 107–12; DI V, 323 and DI VII, 6 on King Christian's sentence

support for his case. In Iceland, Björn confiscated Guðmundr's property, with the support of Guðmundr's sister Ólöf, whom he bought off at a cheap price, as she probably preferred the support of Iceland's mightiest man to an insecure claim to a disputed property.⁶³

The next two decades saw Björn Þorleifsson's increase in power. He was the undisputed head of his family after his brother Einar's death in 1452, and he served as hirðstjóri from 1457 to 1467.⁶⁴ However, his prominence did not pass uncontested. Ormr Loftsson was married to Björn's sister Solveig and was hirðstjóri from 1432 to 1445, when he was replaced. The circumstances surrounding his resignation are unclear, but Helgi Þorláksson assumes that Björn did outmanoeuvre him.⁶⁵ Another indication of rivalry is that Ormr left Iceland for Norway a year later, after what Arnór Sigurjónsson considers a marital quarrel on whether Ormr should support Björn against English merchants or not.⁶⁶ Solveig apparently sided with her brother against her husband, and Ormr never came back. Their oldest son Einar chose to stay out of trouble, but the younger son Loftr attacked Björn at Núpi in 1467.⁶⁷

Björn's career came to an abrupt end in 1467, when English merchants killed him and took his son Þorleifr as hostage. After his death, his widow Ólöf Loftsdóttir emerged as the prime defendant of their children's claim. Now dissent was soon to emerge, and it turned out that Björn's dominance had been built on shaky ground. The first attack came from Loftr Ormsson, who supported Guðmundr Arason's daughter Solveig against Björn's descendants, the latter still in the possession of the majority of wealth after Guðmundr Arason (through their support of Ólöf Aradóttir's claim). Loftr even ended up in conflict with his own mother, but he settled with Þorleifr in 1470.⁶⁸ The subsequent year, Þorvarðr Eiríksson, a nephew of Margrét Vigfúsdóttir who had been raised at Grund in Eyjafjörður, was responsible for the krossreið against Magnús, a supporter of Þorleifr. This proved to be a strategic mistake, and Þorvarðr was deemed an outlaw.⁶⁹

However, the long-term conflict concerning Guðmundr Arason's property did not stop. After Loftr Ormsson had settled with Þorleifr and Ólöf in 1470, Guðmundr's daughter Solveig married Bjarni, a man of rather humble origin.

63 Arnór Sigurjónsson 1975: 175–84

64 Helgi Þorláksson 2004

65 Ibid

66 Arnór Sigurjónsson 1975: 144–50

67 DI V, 432

68 DI V, 514

69 DI V, 573

Meanwhile, the king had been alarmed that the property of Guðmundr was worth far more than Björn Þorleifsson had stipulated, in all probability in an attempt to yield as little as possible of the fortune to the king, who demanded his share in disputed property. Solveig probably had her spokesmen at the king's court, because in 1478 a new royal verdict stated that Guðmundr's wealth should be shared into three parts: one to Þorleifr and his kin, one to Solveig and one part to the king.⁷⁰ Þorleifr was infuriated, and promptly left for Norway. Meanwhile his brother Einar did the dirty work by killing Bjarni and hindering the royal verdict from being implemented.⁷¹ In 1482, Þorleifr returned and had served his mission well. He was appointed hirðstjóri and had managed to make the king change his mind. Now he could appropriate half of Guðmundr's wealth and dispose the other half as the king's representative, and oust Andrés, the grandson of Guðmundr, from the area, even demanding an oath of loyalty from him.⁷²

Solveig Björnsdóttir was the sister of Þorleifr and Einar, and according to Arnór Sigurjónsson, she was destined to enter unmarried into a monastery in order not to spread out the family fortune.⁷³ However, Solveig was not satisfied with that solution, and produced six children with Jón Þorláksson.⁷⁴ In 1479, she married the mighty Páll from Skarð, who was related to Loftr Guttormsson (his grandmother had been Loftr's concubine). They aimed not only for Solveig's share in the family wealth, but after the death of her brothers Einar and Þorleifr in 1492–93 they demanded the whole wealth, claiming that Þorleifr's marriage was invalid.⁷⁵ Þorleifr's widow Ingvaldr found herself in a desperate situation with five young children and no protector. Adding to the trouble, Guðmundr's grandson Andrés required his share in the inheritance after Guðmundr. Now two things happened. Ingvaldr's son-in-law Eiríkr killed the mighty Páll from Skarð in 1495, and her son entered into a settlement with Andrés.⁷⁶ Eiríkr had no power to withstand a trial and was deemed an outlaw. Still the imminent danger of losing all kin property had been avoided with Páll from Skarð's death, and settling with Andrés also prevented further dismay to arise from that side.

70 DI VII, 9. Arnór Sigurjónsson 1975: 202–03. The involvement of the royal apparatus went through several phases, see i.a. DI V, 323, 337, 377, 416

71 DI VI, 388, 389; DI VII 10

72 DI VI, 360, 447. Arnór Sigurjónsson 1975: 221

73 Arnór Sigurjónsson 1975: 244–45

74 Jón wrote one book in Latin for Bjarni Ívarsson, DI V, 647. Arnór Sigurjónsson 1975: 246

75 DI VI, 669. They had themselves been forced to obtain papal admission for their own marriage, since they were related in fourth degree. DI VI, 183

76 DI VII 387, 549. Arnór Sigurjónsson 1975: 281–84

The conflict about Guðmundr Arason's inheritance – a feud?

For almost a century, the families of Loftr Guttormsson and Þorleifr Arnason dominated northern and western Iceland, with Vigfús Ívarsson's family close by. In retrospect, we can see the struggle for the wealth coming from Guðmundr Arason as a common theme down through the fifteenth century. Viewed in this long-term perspective, the competition between families of Loftr and Þorleifr looks like one endemic feud, in that it took place between hostile groups, and in that it was conducted out of a rough sense of balance. This is in line with a broader definition of feud, as has been suggested by Jón Viðar Sigurðsson, who considers feuds as lasting rivalries which occasionally explode in outright homicides. This perspective also resembles Paul Hyams' notion of a 'feud culture', in which the central tenet is not the concrete outbursts of violence, but the whole atmosphere and culture of self-help, collective responsibility and thinking in terms of retribution.

Seen from another angle, it would be misleading to view the struggle between Loftr's and Þorleifr's families as one prolonged conflict, since alliances between the families were just as characteristic as fights between them. Even if the numerous intermarriages did not accomplish a termination of rivalry, they certainly contributed to creating periods of peace and stalemates. The rivalry consisted of lots of lesser cases of disagreement, resembling what Jesse Byock labelled 'feudemes' – the smallest building blocks of conflicts.⁷⁷ These conflicts were far from being wars, partly because the parties were tightly intermingled, partly because the intensity of hostility varied a lot.

The conflict between families of Loftr and Þorleifr also resembles a feud in that the level of violence was far from being uncontrolled or out of proportion. Helgi Þorláksson has argued that the forms of violence became milder after Iceland was made part of the Norwegian kingdom in 1262–64.⁷⁸ Home riding was a strategy followed several times in the course of this struggle. Sometimes it ended with homicides (as in 1471 and 1495), but more often the result was that the threatened person succumbed (as in 1445 and 1467). The reason why homicides (vengeance killings) became less frequent was partly that they were risky undertakings. Not only did they create an antagonistic atmosphere in which retribution would be expected, they also automatically involved the king as a part who demanded fines. Moreover, the institution of home riding normally accomplished the same effect

⁷⁷ Byock 1982 on feudemes

⁷⁸ Helgi Þorláksson 2004

as homicides, but at a smaller cost. The threatened party had received a strong message that the opponent had the means and will to enforce his power, which was in essence the same effect that killings had in Freestate Iceland. In this perspective, ‘heimreið’ was a means of lowering the transaction costs.⁷⁹ It is rather uncommon that leading men were killed in fifteenth-century conflicts. One major deviation is Björn Þorleifsson, but tellingly it was outsiders – the English – who killed him. Páll from Skarð was also killed, probably because he did not content himself by securing a share of the the inheritance of Þorleifr’s family, but went for it all.⁸⁰ That made him an urgent threat to the system of balance that had applied prior to his initiative. The normal pattern was that men who were killed or excluded from society by an outlaw verdict were rather weak (like Bjarni in 1482), that they had misjudged the situation severely (like Þorvarðr in 1471) or that they simply took the risk in order to accomplish an important task (like Eiríkr in 1495).

A third ‘feud-like’ feature of fifteenth-century conflicts is that the make-up of groups was not determined once and for all. The case of Guðmundr Arason illustrated that fortunes could change rapidly in Icelandic politics, and that a marriage could alter the political landscape substantially. Intermarriages posited a row of women as bridgeheads between their own kin and their husband’s families, making the demarcation of the groups very fluid and overlapping. There was no given answer as to how these mediating women would react and act in situations of discord. Some women, like Ólöf Loftsdóttir, clearly sided with their new family when tension arose. Ólöf grew up at Möðruvellir fram, but after she was married to Björn Þorleifsson she supported him and his family wholeheartedly. Others, like Solveig Þorleifsdóttir, who was married to Ormr Loftsson, stood firmly by their own kin, which probably contributed to the dissolution of her marriage. In her case, the split even continued with their sons, one seeking middle ground while another proceeded against his father’s family, including his own mother.⁸¹

Kinship was just as bilateral and overlapping in the fifteenth century as it had been in the Saga Age, and there was no recipe on whom to support in a conflict. A rough rule was that most people would seek the faction with most power. Ólöf

79 Miller 1990: 80–84, 104–09 on transaction costs

80 He acted close to what Byock calls an ‘ójafnaðarmaðr’, a man without measure (Byock 1988: 128–29)

81 Arnór Sigurjónsson 1975: 135–150. The difference between Ólöf Loftsdóttir who sided with her new family and Solveig Þorleifsdóttir who followed her biological kin may have to do with power, as both ended up supporting the family faction who had the upper hand in the latter half of the fifteenth century. Yet this is only one option, and we cannot rule out that other factors contributed, such as personal affection or personality.

Aradóttir preferred seeking the support of Björn Þorleifsson at the expense of suing him for her matrimony – Guðmundr Arason's heritage – probably out of a conviction that she would be better off with a tiny share and a secure alliance than in pursuing an uncertain outcome against a powerful opponent. Yet, even if power attracted clients, it was equally certain that a discontent party would seek redress, and that there would be magnates eager to involve themselves in cases where there were high stakes. Lofti Ormsson could not resist the offer by Solveig Guðmundsdóttir to act on her behalf against Þorleifr Björnsson in light of the vast fortune – Guðmundr Arason's wealth – waiting at the other end. When he backed out, there were still other options for Solveig, who had nothing to lose. She subsequently married a small farmer, who did his best to stand up against the power. They failed, but others succeeded, such as Þorleifr Björnsson's widow, who had a bothersome opponent killed by her son-in-law.⁸²

Thus, the dual character of power persisted. A powerful magnate would surely attract followers, but he would also alert other magnates who were anxious to counter his power. This type of dynamic had little to do with foreign interests or ideological issues. No principal stance separated the parts from one another. Both competed for royal offices, which indeed formed an asset in the rivalry, and both tried to use kings, bishops and Englishmen to their own advantage. The fact that the latter external players could influence and interrupt the power struggle does not mean that the rivalry in itself changed character. Rather new elements were accommodated within its structure.

The image of fifteenth-century conflicts presented here is very different from the one presented in *Saga Islands*, where they are described as violent, chaotic and interruptive, and as a sign of a disordered society lacking a central power able to conduct an effective enforcement of law. Moreover, the conflicts were not so dominated by ideological and foreign aspects as Björn Þorsteinsson holds. The conflicts of the fifteenth century look much like feuds in that they involved a hostile relationship between variable groups, controlled violence and a sense of balance between the parties involved.

Fifteenth-century literature, as viewed from Möðruvellir fram

A main difference between the Freestate period and the fifteenth century is that the latter period is devoid of narrative sources. The brief, scattered bits of information that come from diplomas and annals tell us very little about what the actors

82 Such hired killers had a long tradition in Icelandic history. On 'flúgumenn', see Amory 1992

thought of the conflicts they were involved in. This mental aspect is crucial to bear in mind if we are to decide whether conflicts should be classified as feuds or not. Did people view the period as a lawless one from which it would be better to escape the sooner the better, in line with the message in *Langaréttarbót* from 1450, quoted in extenso in *Saga Íslands V*?⁸³ Or did they perceive of the struggles as a matter of honour and self-help in a society in which it was an individual responsibility to enforce one's own right, as Helgi Þorláksson has found traces of in *Áshildarmýrarsamþykkt* from 1496?⁸⁴ There are no narratives like the family sagas that can flesh out the intentions and aims of the actors involved in this power struggle. Yet it is possible to get closer to what people thought when they were quarrelling with one another, namely by addressing the fictional literature of the period. Even if Icelanders no longer wrote sagas about the conflicts of their day in the fifteenth century, they had not laid down their pens! They just wrote about different things. Either they copied or rewrote earlier sagas, or they wrote sagas about mythical heroes of a bygone and imaginary past. More than 30 *fornaldarsögur* set in the Nordic realm and a roughly similar number of *fornsögur suðurlanda* with the whole world as an arena have been preserved from the Middle Ages.⁸⁵ Historians have hardly paid attention to this large corpus of texts, since they have considered them to be unhistorical in content.⁸⁶ They certainly are! However, they may be used in other ways. If we use them instead as remnants to contemporary issues, a new route may open up.

Two methodological challenges must be dealt with when using legendary sagas as sources. First, they purport to tell about historical events, but it is obvious that this is not so, partly due to the huge lapse in time to the events depicted and partly because the tales are loaded with supernatural elements. A second challenge is that the plots are highly stereotyped. Normally the story is about a hero venturing into the periphery in order to obtain a bride. After a series of clashes he manages this, and the story proceeds towards a happy ending where the couple is married and the areas in question are integrated in a peace treatment.⁸⁷ How

83 Björn Þorsteinsson and Guðrún Ása Grímsdóttir 1990: 97

84 Helgi Þorláksson 2004

85 Driscoll 2007: 190–93. The number of *fornsögur suðurlanda* is far higher if we include post-medieval examples. (Driscoll 1997)

86 Apart from some historians of religion and archaeologists, few scholars use *fornaldarsögur* as historical accounts nowadays. Jens Peter Schjødt argues that legendary sagas can contain traces of pagan religion (Schjødt 2008: 167–80).

87 Kalinke 1990 on the bridal-quest theme. Scholars like Marianne Kalinke (1990), John McKinnell (2005) and Matthew Driscoll (1996) emphasise the highly stereotyped epic structures of adventurous sagas, and hence go far in disclaiming their potential historical value.

can such adventurous and stereotyped literature possibly be used as historical sources?

The legendary content of these sagas is a major obstacle if we wish to read the stories as reliable historical accounts, but used as remnants to the historical situation in which they were written this is no problem. To the contrary, the fantastic content of *fornaldarsögur* can even prove to be an advantage, as formulated by Else Mundal:

Perhaps the freedom of imagination which the authors of legendary sagas had might lead them to render attitudes, dreams, desires, etc. more pronounced than in texts that mirror historic experience more directly.⁸⁸

As for the stereotyped form, there is considerable variation in how stories are told in these genres. Such variation can exist between different sagas, as well as between different text witnesses (versions) of the same saga. In classical philology, variation has usually been viewed purely negatively as corruption from the original, but New Philology has put this on the head by stating that variations are highly interesting because textual changes reflect differing historical conditions.⁸⁹ In this investigation, variation is the prime focus of interest, in line with the latter approach. Fictional literature may fill in the gap between the brief and barren events recorded in the diplomas and the mental frame into which they should be interpreted. In the rest of this chapter, I will investigate a group of manuscripts which were produced at the Möðruvellir fram situated in Eyjafjörður in northern Iceland, in the third quarter of the fifteenth century, when Margrét Vigfúsdóttir was the head of this farm.

Stefán Karlsson and Christopher Sanders have argued that several manuscripts were produced at Möðruvellir fram in the third quarter of the fifteenth century.⁹⁰ First, scribal hands can be identified as similar to diplomas written here. Second, names figuring in the manuscripts can be connected to the kin of Margrét and her brother Ívar Hólmr, including her nephews Bjarni and Guðmundr, and Ívar Narfason two generations further down. Sanders holds that some manuscripts followed the family for many generations. Third, Möðruvellir fram was a farm capable in resources to produce manuscripts. According to a church inventory, the

88 'Nettopp den fridomen forfattarane av fornaldersogene hadde til å sleppe fantasien fri, kunne føre til at holdningar, draumar, ynske osv. kanskje kunne kome klarare fram enn i tekster som speglar ein historisk røyndom meir direkte'. Mundal 2003: 32

89 On the relationship between Classical and New Philology, see Haugen 2000

90 Sanders 2000: 44–52; Stefán Karlsson 1999

farm harboured two priests and one deacon, which puts it almost on par with the neighbouring monasteries Munkaþverá and Möðruvellir in Hörgárdal.⁹¹ *Jarðabók Árna Magnússonar og Páls Vídalíns cadaster* valued the farm to 200 hundreds, which posits it among the richest in Iceland.⁹² As the head of Möðruvellir fram, Margrét Vigfúsdóttir must have been an imposing figure. She must have also been a devoted patron of literature, as the following manuscripts can be attributed to Möðruvellir fram in her time: Holm perg 7 fol., AM 81a fol. and AM 243a fol., AM 132 4to, AM 579 4to (only in fragments), AM 445c II 4to, AM 162 Aη fol. (only in fragments), AM 673a III 4to and AM 343a 4to.⁹³ This makes the farm one of the main literary centres of Iceland in its day.

‘It could be thought that the local aristocracy of the period had a keen sense of its own identity which it sought to manifest and strengthen through the production of manuscripts.’⁹⁴ These are Christopher Sanders’ final – and rather modest – words in his facsimile edition of Holm perg 7 fol., a manuscript which he identifies as part of the Möðruvellir fram group. I indeed agree with Sanders, and I would like to specify his statement a bit more. What kind of manuscripts were produced at Möðruvellir fram, and what can they tell us about what the people living there, and their probable patron Margrét, thought of as interesting and relevant topics of their day? As a preliminary remark, it should be underlined that the different manuscripts are characterized by a plurality of perspectives and norms, which make them unsuitable for drawing straightforward conclusions about political preferences or aims. This comes as no surprise. People are seldom so simple that their preferences can be extracted directly from their products. Yet this does not imply that no lesson whatsoever can be drawn from them! Let us approach this in a gradual fashion.

A first observation is that the king is indeed present in the mental universe at Möðruvellir fram. AM 81a fol. and AM 243a fol. were probably produced and preserved together in a unity. The former contain the Norwegian contemporary kings’ sagas *Sverris saga*, *Böglunga sögur* and *Hákonar saga Hákonarsonar*, while *Konungs skuggsiá* can be found in the latter. Thus, the people at Möðruvellir fram considered themselves part of a community with Norway. This could appear as something of a surprise, considering that *Hákonar saga Hákonarsonar* tells the story of how Iceland became part of Norway. However, to an Icelandic chieftain in the fifteenth century this was no story to hide or be ashamed of. Maybe Vilh-

91 Sanders 2000: 47

92 *Jarðabók Árna Magnússonar; Páls Vídalíns cadaster*: 274

93 Sanders 2000: 41–44

94 *Ibid.*: 52

jalnr of Sabina's words in 1248 that Iceland's kinglessness was improper had had its effects?⁹⁵ Moreover, as we have seen, Margrét herself had strong bonds with Norway. Her grandmother was Norwegian, and she had a sister living there, as well as several properties. Among the sagas her family had kept in their custody was *Beyvers saga*, which figured in the wedding inventory of Margrét's grandmother in 1366.⁹⁶ A manuscript of *Jónsbók* – AM 132 4to – also confirms the link between Iceland and Norway.

However, acknowledging Norwegian superiority and the royal ideology did not imply that Margrét and her likes were foreign to more 'nationalistic' Icelandic literature. Among the manuscripts at Möðruvellir fram is a fragment of *Egils saga Skalla-Grimssonar*, which originally probably contained the whole saga (AM 162 A η fol.). *Egils saga* explained the Icelandic version of the settlement as a move away from tyrannical Norwegian kings in order to establish a society where people could govern themselves. This highly idealized and biased story of a proud Icelandic kick-off still had its actuality, and could perfectly well coexist with manuscripts formulating an opposite view of the ideal society. This seeming contradiction becomes smaller when we take into account that Icelandic magnates for all their skepticism towards a monarchical society were keen to establish connections with the king when it could work to their own advantage.

The mental horizon in Möðruvellir fram was even more heterogeneous, comprising a world smaller than Iceland and larger than Norway. At the local level, *Svarfdæla saga* (AM 445c II 4to) tells about Icelanders settling in the localities of Eyjafjörðr in the tenth century, thus providing the link between previous generations and the contemporary one living there.⁹⁷ Three manuscripts – Holm perg 7 fol. (three 'riddarasögur' and eight 'fornsögur'), AM 579 4to (existing only in fragments, almost identical to Holm perg 7 fol.) and AM 343a 4to – took people farther away, to Europe, Africa and Asia, and a world in which kings are commonplace. A preliminary skimming of the manuscripts produced at Möðruvellir fram thus shows that they contained literature of diverse kinds. If one should draw a conclusion from this composition, it must be that it testifies to a complex mental universe, which was wide in geographical terms. It also included a true variety

⁹⁵ *Hákonar saga Hákonarsonar*, ch. 257

⁹⁶ DN IV, 457

⁹⁷ Several other Icelandic sagas are situated in Eyjafjörðr. While Sigurður Nordal held that saga writing had been brought to the region through Sighvatr Sturlason's takeover as chieftain there in the 1230s, Theodore M. Andersson argues that the literary activity in Eyrafjörðr has a longer pedigree, starting with Þorgeirr Hallason and his kin's close connections with King Ingi Haraldsson and Erlingr skakki in the middle of the twelfth century. In his opinion, *Morkinskinna* was produced in Eyjafjörðr (Andersson 1993)

of actors: chieftains and peasants, more frequently kings and princes, in many of them giants and other fantastic creatures, whereas bishops and priests are not that common to encounter. This heterogeneity can be interpreted as a sign that there was no consensus as to what values and what traditions were considered most attractive and memorable.

Yet we should not leave it at that. Jean Dagenais states that in the Middle Ages '[t]exts were acts of demonstrative rhetoric that reached out and grabbed the reader, involved him or her in praise and blame, in judgments about effective and ineffective human behaviour'.⁹⁸ If we suppose that manuscripts were utterances which reflect views of what values and norms were considered to be important, then we need to analyse the manuscripts in more detail. Scrutinizing the whole corpus of manuscripts produced at Möðruvellir fram would be an overwhelming exercise. Instead I will look closer at one of these manuscripts in order to approach the question on how people understood and interpreted contemporary conflicts: AM 343a 4to.

Feuds in AM 343a 4to?

AM 343a 4to is the largest Icelandic medieval manuscript containing 15 sagas: *Þorsteins þáttur bæjarmagns*, *Samsons saga fagra*, *Egils saga einhenda ok Ásmundar berserkjabana*, *Flóress saga konungs ok sona hans*, *Vilhjalms saga sjóðs*, *Yngvars saga víðförla*, *Ketil saga hængs*, *Grims saga loðinkinna*, *Örvar-Odds saga*, *Áns saga bogsveigis*, *Sáluss saga ok Nikadórs*, *Hálfðanar saga Eysteinnssonar*, *Herrauds saga ok Bósa*, *Vilmundar saga víðutan* and *Meistara Perus saga*. The last one is an 'ævintýri' (fairy tale). *Samsons saga*, *Flores saga*, *Vilhjalms saga*, *Sálus saga* and *Vilmundar saga* are classified as '*fornsögur suðr-landa*', and the remaining nine sagas as '*fornaldarsögur*'. However, these labels do not take us very far, as there is much overlap in themes between sagas of different genres, and I shall not utilize this classificatory system further.⁹⁹

The manuscript in itself contains no obvious message or ideology. Its sagas seem to follow one another in a haphazard order. On the other hand, heterogeneity is normal in medieval composite manuscripts.¹⁰⁰ This means that even if it is impossible to decipher one single meaning from the manuscript, the vast resources put

⁹⁸ Dagenais 1994: xvii

⁹⁹ Genres have been widely discussed, see Driscoll 2007

¹⁰⁰ As Carlquist has maintained, secular compilatory manuscripts were often intended as a kind of private library, which can account for the diversity of sagas included in them. Carlquist 2002: 10–12, 103

into the production of it signals that this was not done without any purpose. The central tenet is to treat the manuscript as one unity, not as a collection of different sagas. This does not signify that the manuscript communicated a unitary message, but that the totality in itself is significant. With all its loose ends and bits, the manuscript can be scrutinized for its meanings, which again can be related to its external historical context. So, what can the plots in AM 343a 4to tell us about the contemporary reality in which this manuscript was produced? Or to be more specific: Are there feuds in AM 343a 4to? Let us look at the different aspects of feuds in turn, and relate them to the stories in AM 343a 4to, as well as to contemporary parallels:

- A hostile relationship between groups, in which there is collective liability
- Norms of honour controlling and limiting violence
- Keeping of scores according to a rough principle of balance, including settlement
- Groups are variable and frequently change in size and composition

Group rivalry

Rivalry between different factions with collective liabilities is common in the sagas in the AM 343a 4to. In *Örvar-Odds saga*, the main protagonist Örvar-Oddr and his men fight several combats with other Viking warriors. In the first part of the saga, they encounter successive Viking bands, whom they test their valour against, and where they fight united as a group. The latter part of the saga is devoted to Oddr's struggle against Ögmundr Eyþjófsbani, in which he loses his men one by one, possibly intended as a critique of exaggerating the martial heroic ethos.¹⁰¹ Jón Viðar Sigurðsson has stated that the struggles in *Örvar-Odds saga* are radically different from contemporary struggles.¹⁰² This is of course the case, in that they are recounted in a fantastic mode. Yet, although they are set in a mythological past, the struggles in the sagas may resemble contemporary struggles. One obvious parallel is that the dynamic in political struggles is not provided by a hierarchical order of descending obedience towards one's superior, but through competition between groups that are fairly equal in power, share a strong collective group identity and are wholly intent on fighting one another when they meet.

Örvar-Odds saga differs from most other sagas in AM 343a 4to in that it has a non-royal protagonist (although Oddr ends up as king). Most other sagas in AM 343a 4to have kings as main characters and kingdoms as political entities. Nevertheless, the struggle between kings does not differ substantially from how

¹⁰¹ See Orning 2012 for an analysis of this saga

¹⁰² Jón Viðar Sigurðsson 2009: 72

Viking chieftains are depicted in *Örvar-Odds saga*. The dynamic is furnished by the rivalry between perceived equals. Moreover, in the sagas with kingdoms as entities, the overall structure of the political field as constituted by equal players emerges even more clearly. For instance, *Vilhjálms saga sjóðs* tells about the combat between Miklagarðr and several contenders from the Middle East: Ninive and Babylon.¹⁰³ These kings participate in an intense struggle for hegemony around the Mediterranean. It is described in a manner that associates with the European state system, but also with the feuding structures which we know from the family sagas on a smaller social scale.

The legendary sagas differ from the Icelandic family sagas not only in their more mythological content and focus on kingdoms. They also contain a heavy opposition between centre and periphery that we do not find in the family sagas, which are famous for their objectivity. The explicit message of the legendary sagas is that giants and other creatures living in the periphery are ugly, inferior and distant as compared to the centre. However, the action in the sagas reveals that the periphery is much stronger and more similar to the centre than is openly stated. This amounts to what Margaret Clunies Ross has called a ‘centre bias’ of myths,¹⁰⁴ which applies equally well to these sagas. The vulnerability of the centre is illustrated in cases of internal rivalry within the centre, which may prove fatal in light of the threat coming from the periphery.¹⁰⁵ Another signal of this far more reciprocal relationship comes from the need in the centre for obtaining precious objects or women in the periphery. Typically, no explanation is given for the urge. What remains is the urge

103 In *Sáluss saga ok Nikadórs*, the Roman Empire is attacked by Kappadokia, and the saga follows the struggle between the two powers for hegemony in the region. In *Flóress saga konungs ok sona hans*, Traktia and Kartago rival for hegemony.

104 Clunies Ross 1994: 49

105 In *Hálfðanar saga Eysteinsonar*, the King of Norway, Eystein, launches a campaign against Garðaríki. It is successful and ends in that the king of Garðaríki is killed. One would expect this to be a celebrated deed, but in the course of the saga, it is exposed that the deed is denounced. This cannot be demonstrated directly since Norway is the centre and hero, but it is done indirectly, in that the Norwegian prince Hálfðan does not seek revenge after his father has been killed by the earl of Garðaríki. Moreover, Hálfðan is eventually rescued by the same earl, and even enters into an alliance with his father’s killer without demanding vengeance – this is no common incidence of Old Norse literature! The background of why Eystein’s killing of the king of Garðaríki is denounced is that it renders both countries in a vulnerable position. Soon after King Eystein is killed, his magnate Úlfrkell opts for the throne, aided by what turns out to be a false princess of Garðaríki. Úlfrkell can draw on many discontent elements in his fight against Hálfðan, including the king of the Finns as well as disconcerted elements within the realm. The message is that too hard a treatment of Nordic neighbours runs the risk of releasing inherent tensions, and that right beneath the orderly surface lingers tension and chaos. The centre is in a vulnerable position, so that internal rivalry may prove disastrous.

itself, the strength of which reveals that the periphery is vital for the functioning of the centre.

Most sagas in AM 343a 4to are sparked off when the centre encroaches upon the periphery. Then it is duly demonstrated that the periphery is in no way a passive recipient of aggression from the centre. To the contrary, the conflicts following upon the encroachment bear the stamp of feuds. For instance, in *Samsons saga fagra*, the central kingdoms of Brittany, England and Ireland initially settle their animosities and send off a man to obtain a cloak in the periphery. He succeeds in his mission, but only to invoke a retribution effort from a united periphery of giants and trolls that threatens to sweep away the whole centre. The threat is only diverted when the central agents join forces and offer the periphery honourable conditions. Hence, in spite of a normative bias favouring the centre, the sagas in AM 343a 4to show that the relationship between the centre and the periphery is tense and equal. This dynamic with equal rivals competing for power is reminiscent of the rivalry between the families of Loftr and Þorleifr for hegemony in fifteenth-century Iceland. Even if there existed hierarchical, state-like structures, competitive relationships governed by feuds continued to flourish.

Norms limiting violence

Despite intense rivalry between equal parties, in most sagas in AM 343a 4to there exist limits as to how fighting should proceed. In particular, in *Örvar-Odds saga*, the norms limiting violence are spelt out, as fighting between warriors is organised according to set rules. The parties must declare their identities and their intention to fight honestly, and the combat is to take place on a specific place and time, without ambushes. In short, these rules resemble the idealised chivalric code of the day. Courage and valiance are the determining qualities of a warrior. This is succinctly expressed in Angantyr's and his brothers' disappointment after having slaughtered a group of men whom they think are Örvar-Oddr and his companions, the disappointment stemming from their slight resistance:

Never has our father Arngrim lied more to us than when he said that these men were bold and valiant Vikings, so it was to no avail to use swords against them. Here we have seen that they all have behaved cowardly and fought poorly. Now we will go home and kill our contemptible father, as a retribution for his lie.¹⁰⁶

106 'Eigi hefir Arngrím, faðir vor, í annat sinn logit meir at oss, enn þá hann sagði oss þessa menn harða ok mikla víkinga, svá at ekki reisti rönd við, en vér höfum hér svá komit, at allir hafa verst atborit sík, ok sízt dugat; ok förum heim ok drepum skítkarlinn, fœður vorn, ok hafi hann þat fyrri lýgi sína.' *Örvar-Odds saga*, ch. 13

Oddr himself similarly utters satisfaction when he is unable to frighten Hjálmar and Þórðr – two famous Vikings. That would have secured an easy victory, but it is more important to fight bravely. When the two Viking bands clash, the scene is set for valiant deeds. Only after a prolonged battle in which they have proven their martial qualities can they safely settle and join forces. More often, Oddr conquers his opponents and spares those who have fought so valiantly as to deserve their life, offering them to enter into his own group of warriors. The real counterpiece to Oddr's group is opposing not Viking bands, but defenceless peasants, as expressed in the so-called Viking laws. Another stranger to this culture is Ögmundr Eyþjófsbani, who emerges as Oddr's main antagonist in the second part of the saga. Like Oddr he is a fierce fighter, but he breaks with the fundamental rules of the game: he keeps his identity hidden, kills men in ambush and is mostly unwilling to enter into reconciliation. He lures Oddr into a struggle, which eventually empties the chestcase of Oddr's martial universe, and paves the way for an all-encompassing power.¹⁰⁷

The other sagas in AM 343a 4to rather concord with the first part of *Örvar-Odds saga* in adopting the same awkward combination of uncompromising competitiveness and strict rules of fighting. In *Vilhjalms saga sjóðs*, we saw that competition around the Mediterranean was very intense between Miklagarð and Ninive. In the hero Vilhjalm's absence, Ninive seizes the opportunity to conquer Miklagarð. When Vilhjalm's allies subsequently liberate Miklagarð, Ninive's commander Manases is given quarter and honourable conditions of surrender. Their merciful behaviour is facilitated by Manases' moderate behaviour when he had conquered the city. This makes the antagonism look like a puppet play. The underlying reason for this clemency is exposed when Ninive is threatened by Caucasians, who are depicted as beastly strangers. Now the leading magnates from Ninive are not as repulsive as had been indicated earlier. The parties unite, and Manases marries into the leading dynasty of Miklagarð. Even religion turns out to be of minor importance in this massive change of sides.¹⁰⁸

Hence, even if the sagas initially recount an irreconcilable hostility between a centre and a periphery depicted in gloomy colours, this eventually turns out to be but a surface contradiction, which easily dissolves upon threats from players from a radically different culture. The inner circle of *Vilhjalms saga sjóðs* has obvious similarities with the Viking culture of *Örvar-Odds saga*, with its combination of unredeeming hostility and common values on a more fundamental level. The aim

¹⁰⁷ Cf. Orning 2012

¹⁰⁸ The same pattern was duplicated with the heathen Babylon later on.

of the differing warrior bands or kingdoms is not to eradicate one another, but to excel by challenging one another. The underlying reason is that fighting for honour upholds the system that they are mutually dependent on for their living. The mythological framing of the legendary sagas warns against drawing straight-forward inferences to contemporary issues. However, the combination of intense competition on the one hand, and willingness to accept side switching and settlements on the other hand, is fairly similar to the feuds that were conducted between the families of Loftr and Þorleifr. Hostilities were never so absolute that an alliance could not be made, provided that an external enemy appeared. The closest we come to such a violent intrusion in the fifteenth century was when Björn Þorleifsson was killed by the English in 1467. Then the Icelandic magnates were quick to rally together, and the dissolution of Þorleifr's family was obstructed. Yet, only a few years later, the same dual structure of rivalling groups was intact, with Björn's son Þorleifr as head of this family.

Balance, settlement

Another indication that the allegedly uncompromising and uneven conflicts between centre and periphery in AM 343a 4to can be compared to feuds concerns their termination. In a vast majority of cases, the conflicts are brought to an end by entering into a compromise settlement, which includes marriage between leading actors from each side. This is a strong reminder of the central bias of the sagas, since such settlements imply that the parties consider one another as equals, or are forced to do so through the language of power politics. Nowhere is this more pronounced than in the aforementioned *Vilhjalms saga sjóðs*, where all participants end up intermarried, with the exception of the terrible Caucasians. Normally, the settlements are not all-conclusive, but the surprising feature is how many are actually included in them. Even giants are allowed to enter into alliances with humans from the centre, such as Guðmundr from Glæsisvellir, who in several sagas marries into the leading circles from the centre (like his namesake Guðmundr Arason in the early fifteenth century).

Who are not included in the settlements in AM 343a 4to? Often the exceptions are people who are either from a minor background or who behave foolishly. Kvintalin in *Samsons saga fagra* is originally a thief, who seduces the heroine Valentina in a forest in Brittany. Instead of being executed when he is caught, he receives his freedom on condition that he succeeds in obtaining a precious cloth from the north. After he manages to get hold of the cloth, his reputation rises substantially and he is appointed as an earl. However, the aggrieved party musters a large expedition and hangs Kvintalin, while entering into a settlement with the more high-standing

members. Kvintalin resembles men like Bjarni Þorarinsson and Sigmundur priest from fifteenth-century Iceland. Both were men of minor backgrounds who were used by mighty women in the political game. Such humble men were willing to take big risks in order to satisfy their masters, as they had little to lose and much to gain if they succeeded. Yet, even if they succeeded, they had a vulnerable position, since they could not muster support of networks of kin and friends. Bjarni was killed by his opponents, and no one sought compensation for him. When Sigmundur's patron died, his role at the top level of Icelandic politics came to an end.¹⁰⁹ Thus, although low men could rise rapidly in the hierarchy, there were clear limitations as to how lasting and stable such successes were.

The overarching idea of reciprocity severely constrained the scope of action for central agents. *Vilmundar saga víðutan* is concerned with the implications of the foolish acts by an actor from the centre – the king of Russia, whose refusal to marry off his daughter is stamped as arrogant and unwise conduct.¹¹⁰ Neighbouring rivals are indeed rivals, but should still be treated with respect. Beyond the rivalries, there is a community of interests. Hence, the rigid opposition that the sagas intend to convey between a superior centre and an inferior periphery evaporates upon closer scrutiny of the events unfolding in the sagas. Reciprocity lies at the heart of their relationship.

Varying groups, women as in-betweens

Marianne Kalinke has suggested that a large proportion of the legendary sagas can be labelled 'bridal-quest romances', defined as 'governed throughout by the hero's explicit or implicit efforts to attain his end, marriage with the desired maiden'.¹¹¹ Kalinke classifies only one of the sagas in this compilation as a bridal-quest romance, namely *Sáluss saga ok Nikadórs*,¹¹² but several other sagas in AM

109 Solveig Guðmundsdóttir formed an alliance with Bjarni when Loft Ormsson had left her case, and he got the church's support and later the king's support also for Solveig's case. Sigmund priest was likewise an outsider who became part of the power struggles due to his alliance with a mighty woman, Solveig Björnsdóttir. Solveig entered into a union with Sigmund immediately after her husband Ormr had left for Norway under unclear circumstances. Maybe Sigmund had played a role in forcing Ormr to leave the country. Solveig left Sigmund, but later she needed help against her son Loft, and also to further her case against her brother Þorleifr in order to receive parts of the inheritance after Björn. Sigmund acted very unruly, and amongst other things raided his own bishop.

110 In *Flóress saga konungs ok sona hans*, the same kind of haughtiness is disapproved of.

111 Kalinke 1990: 11

112 Ibid. Here the sister of Duke Nikador of Bár on the Italian peninsula is abducted by Duke Matheus from Kappadokia after his proposal has been turned down. Kalinke proposed a quite strict definition of bridal-quest romance, in which the quest is 'the catalyst generating the hero's actions' in order to isolate these sagas from others where wooing plays a more marginal part.

343a 4to have sub-plots of a ‘bridal quest’,¹¹³ or deal with the related theme of fathers who are reluctant to marry off their daughters.¹¹⁴ Kalinke treats the bridal-quest motif as a solely literary one. Fathers who refuse to give away their daughters except to men who can conquer them in battle, or wooers who abduct their brides, definitely belong to the literary realm. Yet the motif can also be interpreted historically, as it draws attention to the central role of women in political struggles. Forming alliances through intermarriage was an important strategy in fifteenth-century politics. We have seen that the kinship structure in Iceland was bilateral with a patrilinear tendency, so a woman was part of two families at the same time: her biological family and the family into which she had married. In cases of conflict, this double allegiance could bring her into an utterly complicated situation. Icelandic family sagas contain numerous descriptions of the dilemmas that women caught in the middle experienced when their biological family clashed with their husband’s family. Such examples can also be found in AM 343a 4to. Most famous among them is Ingebjörg, the Swedish princess who dies out of grief when receiving news of her true love’s death in *Örvar-Odds saga*. In *Yngvars saga víðförla*, several generations of Swedish princesses act as in-betweens and mediators in the rivalry between the kings and the leading magnate family. In such conflicts, loyalty was a tacky issue, as there were no given answers as to whom a woman with bonds to two opposing lineages would support or reject.¹¹⁵ The women of the fifteenth century suffered the same kind of hardships as we have seen in the cases of Olöf Loftsdóttir and Solveig Þorleifsdóttir.

113 *Vilhjalms saga sjóðs* deals with a prince from Ninive who abducts the princess of Miklagarðr in order to marry her. In *Egils saga einhenda ok Ásmundar berserkjabana*, the two daughters of king Hertrygg in Russia are abducted by two monster birds, who turn out to be giants rivaling for the throne in Jotunheimen, competing on who obtains the best wife. In both sagas, bridal quests trigger the subsequent action, but here the roles are turned around compared to the pattern traced by Kalinke, in that the centre is the aggressor. In *Flóress saga konungs ok sona hans*, King Flores proposes to the daughter of King Kastus of Kartago, and upon being refused, he abducts the princess by force. In *Hálfðanar saga Eysteinnssonar*, King Eystein of Trondheim defeats Aldeigjuborg and kills the king. The widow queen receives the choice of becoming Eystein’s wife or his mistress, of which she chooses the first alternative.

114 In *Vilmundar saga víðutan*, a condition for marrying princess Gullbrá of Garðaríki is that the wooer can conquer her brother Hjarrandi in battle. The same reluctance characterises *Flóress saga konungs ok sona hans*, where both the main opponents – King Kastus of Kartago and King Flores of Traktia – refuse to accept wooers. Both *Yngvars saga víðförla* and *Örvar-Odds saga* refer to Swedish kings who are unwilling to marry their daughters to prominent magnates in the realm. Finally, the main protagonists in *Ketils saga hængs* and *Grims saga loðinkinna* have to fight several duels against aggressive wooers to their daughters.

115 See also the queen in *Hálfðanar saga Eysteinnssonar*, and Guðný in *Herrauds saga ok Bósa*

The bridal quest carries dual connotations. On the one hand, it is a symbolic way of showing the importance of alliances, since it implies equality. On the other hand, it communicates a form of challenge, and even superiority, because it is often accompanied by a threat to abduct the bride in case of a refusal. In this latter respect, the threat reminds us of the home riding in that its main function is to signal superiority. Moreover, it calls for a response which can be twofold: either resigning and thereby accepting subordination, or taking up the challenge and thereby implying equality. In *Ketil saga hængs*, the protagonist utters that he will himself decide on whom to accept as the future spouse of his daughter, because he considers this a mark of liberty. This was not an unfamiliar issue in contemporary society. A proposal could be hard to turn down, since that would certainly be interpreted as an insult by the wooer which required retribution. Women were far more than objects, but they were also that. As such, they were the most valuable resources and gifts that could be given away or sought for. A bridal quest was just as historically relevant as it was in literature.

Conclusion

The legendary sagas in AM 343a 4to diverge from Icelandic family sagas in many fields: They speak about kings in a mythological past, they contain a heavy centre bias and their literary value is considered as far less. In the last decades, a new interest in non-realistic sagas has surfaced, but historians have hardly taken part in this reappraisal. It is not surprising that very few are willing to use *fornaldarsögur* as historical sources today. What is more remarkable is that these sagas have not been approached as remnants to their contemporary context, following the breakthrough of this approach in the study of Icelandic family sagas and kings' sagas. When using sagas as remnants, it is irrelevant whether their content is considered to be historically reliable or not. Hence, there should be no principal objections against using legendary sagas as remnants that do not apply to utilizing the more realistic sagas in the same manner.

The centre bias and preoccupancy with kings in legendary sagas show that they are situated in a society in which kings and hierarchies were viewed as part of the social order. This comes as no surprise. Since 1262–64, the question in Iceland had not been whether to live in a kingdom or not, but how to cope in a society ruled by a king. Yet the king's presence in AM 343a 4to is only depicted as natural and undisputed provided that the king rules wisely. Many kings in the sagas happen not to do so, even when they are leaders of established kingdoms. In light of this, it is interesting to find *Konungs skuggsiá* among the manuscripts at Möðruvellir

fram. Here arrogance is ranked among the cardinal vices, and the king's superiority applies only insofar as he proves himself worthy of the title. The sagas in AM 343a 4to can be read as examples of behaviour that was discussed on a more principal basis in *Konungs skuggsiá*.¹¹⁶

However, there is a major difference between AM 343a 4to and *Konungs skuggsiá* in that the latter established the conditions of an ideal society governed by kings and bishops, whereas the former often described societies in which kings usually did not behave very differently from chieftains. Legendary sagas tell about heroic kings from the centre subduing the periphery. However, beneath this surface level, the whole dynamic of the stories in AM 343a 4to still hinges on the potential for conducting feuds. These feuds have parallels in contemporary noble feuds. They occur between rather equal parties within a hostile environment, and they are often terminated with reciprocal settlements. It is precisely the normative consensus among its participants that keeps rivalry going. Behind the criss-crossing webs of apparently ever-changing alliances and conflicts, the fundamental structure and norms of society remain the same. Because everything can change, nothing really changes. Not even kings or prelates can seriously alter this pattern. Kings and churchmen definitely have their place in this universe, but without radically changing the rules of the game.

Thus, on a deeper level, legendary sagas share several similarities with Icelandic family sagas, attesting to more historical continuity between high and late medieval society than has often been stated. This continuity is revealed when the legendary sagas occasionally turn to politics at a local level which goes on rather undisturbed by the power play at the top level of society. Local leaders still occupy a pivotal role in maintaining internal peace in society, obtaining necessary resources as well as protecting the community from external perpetrators.¹¹⁷ In this

116 In particular, the description of king Ingjald in *Áns saga bogsveigis* comes close to the image of a 'tyrannus' in *Konungs skuggsiá*. The same applies to King Flores in *Flóress saga konungs ok sona hans* and the royal family in *Vilmundar saga víðutan*. The entire first part of *Yngvars saga víðförla* can be read as an exemplum of how a king should not behave with his leading magnate. Here a tension between king and magnate is repeated over four generations, sometimes exploding in outbursts of violence when the king does not take proper considerations and treat the magnate with respect. Moreover, the picture of the retinue looks very much like the lamentable situation that *Konungs skuggsiá* regrets. Sagas like *Þorsteins þátr bæjarmagns*, *Örvar-Odds saga*, *Áns saga bogsveigis*, *Egils saga einhenda* and *Samsons saga fagra* speak about newcomers entering a retinue, causing much frustration by turning hierarchies upside down. The sagas render no pleasant history about the envy and the fighting for positions in the retinue. In this game, the king plays but a subordinate part as head of the followers.

117 This is primarily demonstrated in the *Hrafnista sagas*. *Samsons saga fagra* also renders an image of local communities as fairly isolated from the incidents at the top level. Here many regrettable

way, the sagas for all their mythological content, give us a glimpse into conditions at a local level which had not changed radically since chieftains ruled without a king. I think this image might look more similar to contemporary conditions than we are normally willing to accede.

Bibliography

- Agnes Arnórsdóttir, *Property and Virginity: The Christianization of Marriage in Medieval Iceland 1200–1600*, Århus 2010
- Amory, Frederic, The medieval Icelandic outlaw: life-style, saga, and legend, in G. Pálsson (ed.), *From Sagas to Society. Comparative Approaches to Early Iceland*, Hisarlik 1992: 189–203
- Andersson, Theodore M., Snorri Sturluson and the Saga School at Munkathverá, in A. Wolf (ed.), *Snorri Sturluson: Kolloquium anlässlich der 750. Wiederkehr seines Todestages*, Tübingen 1993: 9–25
- , *The Growth of the Medieval Icelandic Sagas (1180–1280)*, Ithaca, NY 2006
- Arnór Sigurjónsson, *Vestfirðinga saga 1390–1540*, Reykjavík 1975
- Bagerius, Henric, *Mandom och mödom. Sexualitet, homosocialitet och aristokratisk identitet på det senmedeltida Island*, Göteborg 2009
- Bagge, Sverre, *Society and Politics in Snorri Sturluson's Heimskringla*, Berkeley 1991
- Björn Þorsteinsson, *Enska öldin í sögu Íslendinga*, Reykjavík 1970
- , *Island*, København 1985
- Björn Þorsteinsson and Guðrún Ása Grímsdóttir, *Saga Íslands V*, Reykjavík 1990
- Brown, Warren C. and Piotr Górecki (eds.), *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, Aldershot 2003
- Byock, Jesse L., *Feud in the Icelandic Saga*, L.A., London 1982
- , *Medieval Iceland*, Berkeley 1988
- , History and the Sagas: the Effect of Nationalism, in G. Pálsson (ed.), *From Sagas to Society. Comparative Approaches to Early Iceland*, Hisarlik 1992: 43–60
- Carlquist, Jonas, *Handskriften som historiskt vittne*, Stockholm 2002

events take place in a forest in Brittany, in which earls and princes stand like helpless observers of a course of action into which they can only hope to delve through alliances with utterly unreliable local agents.

- Clunies Ross, Margaret, *Prolonged Echoes. Old Norse Myths in Medieval Northern Society I*, Odense 1994
- Dagenais, John, *The Ethics of Reading in Manuscript Culture: Glossing the Libro de Buen Amor*, Princeton, N.J. 1994
- Driscoll, Matthew J., The oral, the written, and the in-between: textual instability in the Post-reformation lygisaga, in L. C. Tristram (ed.), *(Re)Oralisierung*, Tübingen 1996: 193–220
- , *The Unwashed Children of Eve: The Production, Dissemination and Reception of Popular Literature in Post-Reformation Iceland*, Enfield Lock 1997
- , Late prose fiction (lýgisögur), in R. McTurk (ed.), *Old Norse-Icelandic Literature and Culture*, Oxford 2005: 190–204
- Einar Bjarnason, Ætt Ívars Hólms hirðstjóra Vigfússonar og niðjar hans, *Skirnir* 138 (1964): 68–107
- , *Íslenzkir ættstuðlar I–III*, Reykjavík 1969–72
- Einar Ól. Sveinsson, *The Age of the Sturlungs*, New York 1953, orig. 1944
- Esmark, Kim, Feudalisme og antropologi. Nye perspektiver på magt, orden og konfliktregulering i højmiddelalderen, (Swedish) *Historisk Tidskrift* 126 (2006): 3–22
- Finnur Jónsson, *Den oldnorske og oldislandske litteraturs historie III*, København 1924
- Gunnar Karlsson, *Iceland's 1100 Years. The History of a Marginal Society*, London 2000
- Halsall, Guy (ed.), *Violence and Society in the Early Medieval West*, Woodbridge 1998
- Hansen, Lars Ivar, 'Ætten' i de eldste landskapslovene: realitet, konstruksjon og strategi, in E. Mundal and I. Øye (eds.), *Norm og praksis i middelaldersamfunnet*, Bergen 1999: 23–55
- Haugen, Odd Einar, Fem argument mot filologien, in Kristinn Jóhannesson et al. (eds.), *Den fornnordiska texten i filologisk og litteraturvetenskapelig belysning*, Göteborg 2000: 17–26
- Helgi Þorláksson, *Vald og ofurvald. Um innlent vald, erlent konungsvald og líkamlegt ofbeldi á 15. öld*, Kistan 2004 (http://www.kistan.is/Default.asp?Sid_Id=28001&tre_rod=004|&tId=2&FRE_ID=39734&Meira=1, download 9 november 2012)
- , Feider. Begrep, betydning, komparasjon, in E. Opsahl (ed.), *Feider og fred i nordisk middelalder*, Oslo 2007: 21–34
- , Feud and feuding in the early and high Middle ages: Working descriptions

- and continuity, in J. B. Netterstrøm (ed.), *Feuds in Medieval and Early Modern Europe*, Århus 2007: 69–94
- Hermann Pálsson, *Gautrek's saga and Other Medieval Tales*, London, New York 1968
- Hyams, Paul R., *Rancor and Reconciliation in Medieval England*, Ithaca, New York 2003
- Imsen, Steinar, *Norsk bondekommunalisme fra Magnus Lagabøte til Kristian Kvart. Del 1: Middelalderen*, Trondheim 1991
- , Den gammelnorske drapsprosessen, (Norwegian) *Historisk tidsskrift* 88 (2009): 185–229
- Jón Jóhannesson, *Islands historie i mellomalderen*, Bergen 1969, orig. 1956
- Jón Viðar Sigurðsson, *Frá goðorðum til ríkja. Þróun goðavalds á 12. og 13. öld*, Reykjavík 1989
- , *Chieftains and Power in the Icelandic Commonwealth*, Odense 1999
- , Allir sem sjá líta ekki jafnt á: sagnaritun um íslenskar miðaldir farm um 1300, *Saga* 38 (2000): 33–57
- , Island og Nidaros, in S. Imsen (ed.), *Ecclesia Nidrosiensis 1153–1537*, Trondheim 2003: 121–140
- , De vennlige islendingene og den uvennlige kongen, in L. Hermanson et als (eds.), *Vänner, patroner och klienter i Norden 900–1800*, Reykjavík 2007: 81–100
- , Historical Writing and the Political Situation in Iceland 1100–1400, in A. Eriksen and Jón Viðar Sigurðsson (ed.), *Negotiating Pasts in the Nordic Countries*, Lund 2009: 59–78
- Kalinke, Marianne E., *Bridal-quest romance in medieval Iceland*, Ithaca, N.Y. 1990
- Løberg, Lars, Glem Torstein mita! En kildekritisk undersøkelse av baron-ætta på Talgje og dens eventuelle forbindelse med adelsætta på Aga i Ullensvang, *Norsk slektshistorisk tidsskrift* 3, 37 (2000): 155–170
- McKinnell, John, *Meeting the Other in Norse Myth and Legend*, Cambridge 2005
- Miller, William Ian, *Blood-Taking and Peace-Making*, Chicago 1990
- Monclair, Hanne, *Lederskapsideologi på Island i det trettende århundret. En analyse av gavegivning, gjestebud og lederfremtoning i islandsk sagamateriale*, Oslo 2003
- Mundal, Else, Fornaldersogene – vurderinga og vurderingskriteria, in Ármann Jakobsson et als (eds.), *Fornaldarsagornas struktur och ideologi*, Uppsala 2003: 26–35

- Netterstrøm, Jeppe Buchert (eds.), *Feuds in Medieval and Early Modern Europe*, Århus 2007
- , The study of feud in medieval and early modern Europe, in J. B. Netterstrøm (ed.), *Feuds in Medieval and Early Modern Europe*, Århus 2007: 9–68
- Opsahl, Erik (ed.), *Feider og fred i nordisk middelalder*, Oslo 2007
- Orning, Hans Jacob, *Unpredictability and Presence: Norwegian Kingship in the High Middle Ages*, Leiden 2008
- , Fornaldersagaer som kilde til politisk kultur i senmiddelalderen, in S. Bagge et als. (eds.), *Statsutvikling i Skandinavia i middelalderen*, Oslo 2012: 143–68
- , Örvar-Oddr og senmiddelalderens adelskultur, in A. Lassen et als. (eds.), *The Legendary Sagas. Origins and Development*, Reykjavik 2012: 291–322
- Orning, Hans Jacob, Kim Esmark and Lars Hermanson (eds.), *Gaver, ritualer, konflikter: Et rettsantropologisk perspektiv på nordisk middelalder*, Oslo 2010
- Poulsen, Bjørn, Adel og fejde i dansk senmiddelalder, in E. Opsahl (ed.), *Feider og fred i nordisk middelalder*, Oslo 2007: 85–106
- Sanders, Christopher, Tales of Knights: Perg. Fol. nr. 7 in the Royal Library, Stockholm, in P. Springborg (ed.), *Manuscripta Nordica*, Copenhagen 2000
- Sawyer, Peter H., Blood Feud in Fact and Fiction, in K. Hastrup and P. Meulengracht Sørensen (eds.), *Tradition og historieskrivning*, Århus 1987: 27–38
- Schjødt, Jens Peter, Kan myten være virkelighet?, in Agnethe Ney et als (eds.), *Fornaldarsagaerne: Myter og virkelighet*, København 2008: 167–80
- Sigriður Beck, *I kungens fránvaro*, Gøteborg 2011
- Stefán Karlsson, The localization and dating of medieval Icelandic manuscripts, *Saga-Book* 2, 25 (1999): 138–158
- Sverrir Jakobsson, *Við og veröldin. Heimsmynd Íslendinga 1100–1400*, Reykjavík 2005
- Throop, Susanna A. and Paul Hyams (eds.), *Vengeance in the Middle ages*, Aldershot 2010
- Tuten, Belle S. and Tracey L. Billado, (eds.), *Feud, Violence and Practice. Essays in Medieval Studies in Honor of Stephen D. White*, Farnham 2010
- Vestergaard, T.A., The system of kinship in early Norwegian law, *Medieval Scandinavia* 12 (1988): 160–193
- Wærdahl, Randi Bjørshol, For å oppnå kongens gunst, in L. Hermanson et als (ed.), *Vänner, patroner och klienter i Norden 900–1800*, Reykjavík 2007: 175–94
- , *Norges konges rike og hans skattland*, Trondheim 2006

Source editions:

- Þorsteins þáttur bæjarmagns, in Guðni Jónsson (ed.), *Fornaldar sögur Norðurlanda* IV, Reykjavík 1954: 319–344
- Samsons saga fagra, in John Wilson (ed.), *Samsons saga fagra*, Copenhagen 1953: 1–47
- Egils saga einhenda ok Ásmundar berserkjabana, in Guðni Jónsson (ed.), *Fornaldar sögur Norðurlanda* III, Reykjavík 1954: 323–365
- Flóress saga konungs ok sona hans, in Bjarni Vilhjálmsson (ed.), *Riddarasögur* V, Reykjavík 1951: 63–121
- Vilhjalms saga sjóðs, in Agnete Loth (ed.), *Late Medieval Romances* IV, Copenhagen 1964: 1–136
- Yngvars saga víðförla, in Guðni Jónsson (ed.), *Fornaldar sögur Norðurlanda* II, Reykjavík 1954: 423–459
- Ketils saga hængs, in C.C. Rafn (ed.), *Fornaldar sögur norðurlanda*, Annat bindi, København 1829: 107–39
- Gríms saga loðinkinna, in C.C. Rafn (ed.), *Fornaldar sögur norðurlanda*, Annat bindi, København 1829: 141–57
- Örvar-Odds saga, in C.C. Rafn (ed.), *Fornaldar sögur norðurlanda*, Annat bindi, København 1829: 159–322
- Áns saga bogsveigis, in C.C. Rafn (ed.), *Fornaldar sögur norðurlanda*, Annat bindi, København 1829: 323–62
- Sáluss saga ok Nikadórs, in Agnete Loth (ed.), *Late Medieval Romances* II, Copenhagen 1963: 1–91
- Hálfdanar saga Eysteinsonar, in Guðni Jónsson (ed.), *Fornaldar sögur Norðurlanda* IV, Reykjavík 1954: 245–285
- Herrauds saga ok Bósa, in Guðni Jónsson (ed.), *Fornaldar sögur Norðurlanda* III, Reykjavík 1954: 281–322
- Vilmundar saga víðutan, in Agnete Loth (ed.), *Late Medieval Romances* IV, Copenhagen 1964: 137–201
- Islandske Annaler indtil 1578*, G. Storm (ed.), Kristiania 1888
- Jarðabók Árna Magnússonar og Páls Viðalíns*, Copenhagen 1943
- Det Arnemagnæanske Haandskrift 81a Fol.* (Skálholtsbók yngsta), A. Kjær (ed.), Oslo 1985–87, orig. 1919 (Hákonar saga Hákonarsonar)
- Diplomatarium Norvegicum*
- Diplomatarium Islandicum*

Chapter 13: Who governed Iceland in the first half of the fifteenth century? King, council and the Old Covenant

Helgi Þorláksson

Introduction

There have been some opposing views about who in reality governed Iceland in the first half of the fifteenth century and especially about the royal government in the country at that time. On the one hand, there is the view that the royal government ('power of the king') was both rather strong and effective and, on the other, that it was weak, due to the presence of the English in Iceland after around 1410 and the precarious position of King Erik the Pommerian abroad in the 1430s. It has even been suggested that the Icelandic subjects were disentangled and drifting away from the Norwegian–Danish authorities.¹ The Icelanders used to hail their new kings of the thirteenth and fourteenth centuries on certain conditions. After the year 1383 we don't hear anymore of such conditioned approvals of the regents; in fact, we don't hear of any formal hailings until the reformation. Was this because Iceland as a skattland which used to be in direct contact with the kings was turned into something else, i.e. a dependency, to a certain extent under the rule of the Norwegian council of the realm, an organ which represented the Icelanders to the king? Can this explain how the old charters of conditions turned into a so-called agreement, or in other words, Gamli sáttmáli, which has been called the Old Covenant in English? Would we do well in adopting a new concept, dropping skattland for biland as far as concerns Iceland in the second half of the fifteenth century?

King Erik supposed to have had a strong position

It has been generally accepted that Queen Margaret, until she died in 1412, was in control in Iceland and was the virtual regent. She apparently had a firm grip on

¹ Björn Þorsteinsson, Guðrún Ása Grímsdóttir 1989: 247

the country; for instance, she had her own candidates appointed for bishops and the officials in Iceland seem to have been loyal to her. Actually, we do not know much about how Queen Margaret governed Iceland but whatever we do know points to the same direction – she was in control.²

Some scholars contend that King Erik had a strong position in Iceland. As a regent, he followed in the steps of his predecessor, the queen, and was in control, despite some difficulties, they say.³ One of the proponents of this view, Skarphéðinn Pétursson, even believed that the king was behind the killing of Bishop Johannes Gerechini Lodehat at Skálholt in 1433.⁴ Gerechini had been the Archbishop of Uppsala in Sweden and his policy and conduct earned him many opponents, among others the pope and King Erik. Scholars maintain that the archbishop was too independent and wilful for the king. When Gerechini had been sacked as archbishop by the pope, he seems to have been under the wing of the king. Gerechini was resurrected and the pope appointed him Bishop of Skálholt, among people ‘somewhat barbaric’, if the wording is rightly understood.⁵ The question is whether Gerechini became too independent and wilful again in the eyes of the king.

When Skarphéðinn Pétursson argued that the king might have been behind the killing of Gerechini in 1433, his arguments were, in the first place, that the instigators who had the bishop killed were the highest officials of the Icelanders, and kept their positions.⁶ In other words, the killing of the bishop shows what the king’s men were capable of. And, second, the charges the king had against the bishop were possibly that he exported fish from Iceland and thus failed him. Skarphéðinn suggested that the bishop had the fish sent to England without any permission from the king, which was a serious matter under the circumstances, as he pointed out. The king was trying to keep such export in check

2 On her allegedly strong position still in 1412, see *Íslandske Annaler*: 290

3 The king’s strong position in Norway was no doubt important for him in Iceland. For instance, among his devoted supporters in Norway was the influential *herra* Eindriði Erlendsson and his former protégé, Árni Ólafsson, who later became both bishop and governor in Iceland.

4 In Iceland, Gerechini was called Jón Gerreksson, since he was the son of Gerrek. See, for instance, Skarphéðinn Pétursson 1959: 43. Icelandic sources are inconsistent as concerns the year of death, 1432 or 1433, *ibid.*: 60. Björn Þorsteinsson (1970a: 127–28) suggested the year 1432 might be right. However, at the same time, he came across a contemporary English source which states that the event took place in 1433; see B.Þ. 1970b: 297–98

5 ‘inter gentes quasi barbaras’, DI VIII: 25–26; Kolsrud DN XVII B: 267

6 Björn Þorsteinsson (1978: 14–15) is in agreement: the most important officials in 1433 and their relatives kept their positions. It is important to realize that these were loyal to the king; see Helgi Þorláksson 2004, and the following text.

and wanted to direct all the trade to Bergen in Norway and by that help the Norwegian merchants.⁷ What we know is that the bishop had provided an ocean-going vessel for himself on his way to Iceland, via England, and therefore it seems obvious that his cargo of fish was sent to England. This opposed the royal policy, if he did this single-handed, at his own initiative, which is not certain.⁸

We can add several arguments to support the hypothesis of Skarphéðinn about King Erik's strong position, or rather the strong position of his supporters, points which especially concern the magnate Teitr Gunnlaugsson, who became lawman in 1435:

A. In 1431, at the alþingi (the general assembly), an important 'resolution' was issued in the form of a verdict of the court, the lögrétta, as one of the two lawmen summoned six important men to tackle certain issues. They worked like a modern committee and their conclusions were accepted by the general assembly, the alþingi, which called it samþykkt, and therefore a 'resolution' seems a legitimate expression. It has usually been called the second acclamation of King Erik by the Icelanders, which is misleading (see later). Those who accepted the resolution at the alþingi certainly state that they want to be loyal to the king. However, the main point is Bishop Gerechini and his entourage of Danish and Swedish followers. The resolution claims that both the bishops, the other being the Englishman John Craxton at Hólar, had imposed new levies, which the resolution forbids.⁹ Second, the resolution asserts that it is forbidden for foreigners to stay in Iceland during the winter time unless they have a written permission from King Erik; especially Englishmen and German men were forbidden to stay and trade during the winter time. This does not sound pro-English, but rather quite the opposite. These anti-English sentiments are important and will be dealt with later. Third, some Danes and Swedes in Iceland were found suspect since they did not produce any royal letters which proved that they were not deserters from the king's army. These are obviously some retainers of Johannes Gerechini and they, the resolution says, had been accused of beating people and tying without any reason.¹⁰ The resolution

7 Skarphéðinn Pétursson 1959: 77–78

8 One suggestion is that this was his *servitium*, i.e. an obligatory fee for the pope, cf. Gunnar F. Guðmundsson 2000: 126. In such a case, the king might have been accommodating.

9 Beata Losman (1970: 160–61) found it incredible that this could have been the case with Gerechini; rather it would have applied to Craxton.

10 There were hardly any Danes and Swedes of such a bellicose nature in the following of Craxton. On the other hand, there are contemporary sources for such a bawdy 'Danish' retinue of Gerechini (*Íslandske Annaler*: 295; DI V: 51; B.Þ 1970a: 297–98). Those who accused the Danes and Swedes

concludes that anyone who gave the retainers shelter or kept them would automatically become guilty of high treason. The retainers and their supporters were to be arrested and prosecuted, and especially those who kept them during the winter time. This sounds as if the king's men were arraying against Bishop Gerechini and his followers. One of the six who sealed this letter or resolution was Teitr Gunnlaugsson.

The bishop did not yield; his followers were around him when he was killed in 1433 and all of his retainers, who could be captured, were slain, according to a contemporary English source.¹¹ Late sixteenth-century and seventeenth-century Icelandic sources are in no doubt that the bishop was drowned but contemporary foreign sources, so far as is known here, do not state this clearly; they only say that he was put to death, even in the cathedral itself.¹²

B. Now let us take a closer look at Teitr Gunnlaugsson. According to sixteenth-century traditions, Teitr was present when the bishop was killed.¹³ Most sources report that the event took place on 20 July, and this is important, as the day is the mass of the national saint, Þorlákr, and because of the occasion many people gathered in Skálholt, which probably means that the bishop and his men were taken in by the attackers.¹⁴ This makes it more credible that Teitr was present but he probably only participated indirectly, and did not touch the bishop physically. Those who seem to have done so, according to an old verse, were one Óláfr and

most likely were Icelandic; English and German merchants would hardly have sued them in Iceland. Judging from an English source, from December 1432, there had been some clashes in Iceland between the English and the bishop's men ('sui familiares anno currenti'), probably the same unruly group who still stayed in Iceland in 1432 (DI IV: 523; Björn Þorsteinsson 1978: 11–12)

11 Björn Þorsteinsson 1978: 12

12 A foreign source reports that Gerechini was killed in the church when he sang mass, Hamre 1972: 186; Losman 1970: 163 (in a church); another foreign source does not mention drowning B.P. 1970a: 298 ('slain'). In Icelandic historiography, the alleged drowning has become important; Björn thought that Gerechini was drowned and no blood spilled which he, like Skarphéðinn, thought might have been of some importance to the assassins. Björn Þorsteinsson 1970b: 134

13 The annal by Gottskálf Jónsson (1524–90) says Þorvarðr Loftsson had Bishop Gerechini drowned in 1433 (*Íslandske Annaler*). A source from around 1605 relates some traditions from Skálholt and its neighbourhood; its author was born in the area in 1548. According to him, Teitr was the leader together with Þorvarðr (Jón Egilsson, *Biskupa-annálar*).

14 Björn Þorsteinsson (1970a: 297) interpreted an English source and found out that the event took place in late May or thereabout. He was probably wrong about this, and the source could easily be understood as meaning that this occurred somewhat later, when the crew involved had been fishing for some time. Losman (op. cit. 163) seems to refer to documents from the council in Basel and says this occurred on 20 July. A seventeenth-century Icelandic source (*Skarðsárannáll*) also says that this took place on 20 July.

especially one Jón, probably two henchmen of the magnates.¹⁵ They were automatically excommunicated, as scholars have explained.¹⁶

C. When an Icelandic governor or *hirðstjóri* was in Denmark in 1457, King Christian told him that Teitr Gunnlaugsson, the lawman, had opposed him for a long time and was loyal to another king. In 1459, at the *alþingi*, a committee of 12 decided that Teitr should accept King Christian as his lawful king and furthermore that he should not be blamed though by doing this, he would be forsaking King Erik. Teitr accepted this.¹⁷ Erik the Pommerian died in May 1459, but the *alþingi* held in June could not have known this.

From this we can gather that Teitr opposed Bishop Johannes Gerechini and his entourage of Swedes and Danes and further that Teitr was among the leading men who deemed their conduct illegal. Accounts stating that he was present when these men were attacked are convincing. It seems quite plausible that the assailants did this in the name of the king. For Teitr, the ties with King Erik were vital and he would stick to him as a loyal servant as long as possible. In this way, we have reasons to believe that the king did not resent the death of Bishop Johannes Gerechini, or at least did not denounce the instigators officially.

King Erik's allegedly weak position

Next we turn to the opposing view that king Erik was in a weak position in Iceland, mainly because of the presence of the English. Some English merchants came to Iceland in 1412 and soon took over the foreign trade of the country and were no match for Norwegian merchants who suffered defeat and left for good, prior to 1430. The king could not keep up with the English, according to this view, and the Icelanders were very much on their own from c.1420 and enjoyed the beneficial English trade. Following this view, it is further stated that in 1433 'the Icelanders' killed the Dane, Bishop Johannes Gerechini, whom they did not like. They drowned him in a sack with a stone tied to it.¹⁸ This was the general understanding during the Icelandic fight for independence, especially in the first half of the twentieth century.

¹⁵ Jón Egilsson, *Biskupa-annálar*

¹⁶ Hamre 1972: 185–86 ('*ipso facto*'). Lára Magnúsardóttir 2007: 153

¹⁷ DI V: 185–87

¹⁸ Skarphéðinn Pétursson 1959: 68, 71–73. Jón Jóhannesson wrote: 'and drowned him like a dog' (1958: 116) (transl. here). Another tradition does not mention any sack, only a stone and a tow.

Björn Þorsteinsson stressed the impact of the English incursion in Iceland. After 1420, the English, according to him, made it impossible for the king to have his say in Iceland. They controlled Iceland in 1426–48 and had Gerechini drowned through some Icelandic strawmen and planted their own representatives as bishops at Hólar and Skálholt. A strong indication to Björn for the weak position of King Erik was that in 1425 the English captured his main representative in Iceland and brought him to England.¹⁹ The Icelandic supporters of the English had a leeway to act at will, Björn said. He saw the period 1426–48 as one of chaos and labelled it with the designation *Alveldi Englendinga*, meaning something like total domination of the English. The laws were not followed; headstrong men did as they pleased and must have been close to the English.²⁰

Björn asked: Who was the official who should have been the first to interfere when Bishop Johannes Gerechini had been killed? And his answer was, the Bishop of Hólar, John Craxton, should have interfered, as he was in Iceland in 1433–34. According to Björn, he was completely inactive officially in this case after the killing and this was, he said, because Craxton, as bishop of Hólar, was brought to power by the English and they were behind the assassination of Gerechini. Craxton was in a leading position and got Teitr Gunnlaugsson and two other Icelandic magnates for the job, said Björn.²¹ Hardly anyone denies that Craxton was brought to power by some English interest-group.²² But does it necessarily follow that he was behind the assassination?

The understanding that Craxton was inactive as concerns punishing the assailants and further that this is indicative of his political position is ill founded. According to Beata Losman, the council in Basel had learnt about the fate of Gerechini early in 1435.²³ The general council decided that the bishop of Skálholt, Gerechini's successor, should turn against the culprits (*'innskrida mot förbryrarna'*). This was no other than John Craxton, who left Iceland in the summer of

19 Björn Þorsteinsson 1953: 136–64. The main troublemakers seem to have been a group of ruffians from Hull who were somehow angry with the royal officials in Iceland.

20 Björn Þorsteinsson 1970b: 94–163, 204–06. Hamre thinks Björn might be right about this, that the matters of the skattlands were the king's prerogative or own business, and the council hardly ever interfered. King Erik had great problems with the English and the Icelandic magnates became self-willed and independent; Hamre 1972: 184–85. As will be shown, this is not convincing.

21 Björn Þorsteinsson 1970b: esp. 130–36; 143, 145–46. Same 1978

22 This seems to be generally accepted; see Losman 1970: 160

23 According to Losman, the general council discussed and welcomed an application from someone who required that three bishops were appointed to tackle the case and turn against the culprit and this was accepted. In the application, it was suggested that one of the three bishops should be the bishop of Skálholt, Gerechini's successor. That was John Craxton. Losman 1970: 163–64

1434 and on 5 January 1435 was appointed by the pope as bishop of Skálholt or rather transferred as bishop from Hólar to Skálholt.²⁴ But apparently nothing came of any punishments, probably because Craxton does not seem to have returned to Iceland. Craxton might have learnt about the killing in August 1433 and decided to leave the country to consult authorities abroad (the council, the pope) on the proper action to take.

Björn Þorsteinsson did not know what Losman wrote about the council in Basel and seems to have thought that John Craxton should have investigated the atrocities and prescribed some sanctions on his own initiative but deliberately refrained from that.²⁵ However, Craxton's plans for himself were to be moved to Skálholt so that he could then seriously tackle the case. Apparently, it so turned out that he missed that opportunity.

The plans of Craxton, his effort to be moved and the resolution of the Basel council all show that we do not necessarily have to conclude that Craxton did refrain from tackling the Gerechini matter. This undermines the argumentation for Craxton being behind the killing of Gerechini.²⁶

The resolution of 1431, which was mentioned earlier, is not friendly towards Craxton and the English and does not point Teitr out as a likely cooperator for Craxton. And we can ask: Why was it necessary for the English and their friends to exterminate Bishop Gerechini? Björn Þorsteinsson thought he was an obstacle and a menace to the English who could not trade freely because of him.²⁷ But how the bishop could have been such a hindrance that they had to eliminate him is not obvious. Björn was probably aware of this because he suggested that Bishop Gerechini was not only bishop, he simultaneously functioned as *hirðstjóri*, the

²⁴ See also Hamre 1972: 189–92

²⁵ It is not clear to the present author what Björn had in mind exactly but probably that the bishop, while still bishop at Hólar, should have approached Teitr and Þorvarðr somehow. The letter book of the bishop is still preserved but nothing alluding to this case is to be found there, according to Björn.

²⁶ The authorities were not idle in the case. In 1448, the pope entrusted the new bishop of Skálholt with absolving those who assaulted Gerechini and punish them appropriately (DI IV: 723). These, it seems, were those who physically assaulted the bishop. Apparently, nothing came of this. In 1474, the pope, following a request from King Christian, granted permission to the bishop of Skálholt to absolve those who were guilty of killing Gerechini (DI V: 736–37. Gunnar F. Guðmundsson 2000: 122–23). It would be interesting to know if Teitr was counted among these. Those involved were in all likelihood well off and important since the king was their spokesman and the pope burdened them with building a chapel.

²⁷ There seem to have been some clashes between the bishop's men and the English in 1432 as Björn points out (1978: 11–12). This hardly gave them any pretext to get rid of the bishop even though they bore some grudge to his men.

king's governor.²⁸ That would have made him very powerful but there is not the slightest evidence for this suggestion, so far as is known here.

The idea about an English conspiracy is alluring, and Beata Losman was tempted to think along the same lines as Björn, independent of him. She thought the English might have been behind the killing of Gerechini. It is rather convincing that Craxton wanted to serve some English interests in terms of trade and fishing. It has been pointed out that another Englishman, John Bloxwich, applied in Rome for Hólar, when Craxton had been transferred to Skálholt, and was appointed.²⁹ But even though there probably were some mercantile interests, it does not follow that the English were behind the killing of Gerechini.

A weak king or sympathetic?

Therefore, when answering who was right about the interest-group behind the killing of Gerechini, Skarphéðinn Pétursson or Björn Þorsteinsson, Skarphéðinn seems more convincing, even though he did not build a strong case for his opinion. He did not even mention the resolution of 1431 which was directed against the retinue of Gerechini and is a good indication for the king's strong position. Those who stood for it were loyal to King Erik and expressed some anti-English sentiments. The same interest-group was probably active, directly or indirectly, in Skálholt in 1433. King Erik was not necessarily active in the case but the proponents at the *alþingi* in 1431 acted in his name and probably trusted in him, expecting his support, when arraying against Gerechini and his unruly retinue. The killing of the bishop might not have been planned, and matters might even have got out of hand. However, the leading men at the *alþingi* in 1431 acted as if the king was still in control and was less than pleased with Gerechini and his retainers. Here it is found convincing that the premises of Skarphéðinn are right, that King Erik was still in control and could direct his officials in Iceland. On the other hand, if Björn was right, prominent Icelandic magnates were just like puppets of the English. We shall examine this in the following paragraphs.

Other arguments which seem to support the views of Skarphéðinn are that many Icelandic magnates were loyal to the kings. Icelandic magnates were willing to become top deputies and governors (governor: *hirðstjóri*) and became part of the gentry, which was doubtless important for them. The only interest of the English was to trade; they were disinterested in Icelandic matters, in which they did not

²⁸ Björn Þorsteinsson 1978: 10

²⁹ Kolsrud, DN XVIII B: 277–78

interfere. Not least therefore it seems convincing that the kings could control Iceland during the first half of the fifteenth century, even King Erik.

Diagram 1: Loftr Guttormsson and some of his descendants

1. *Loftr 'the rich' Guttormsson*. Of the Skarð-family, living at Möðruvellir *fram* in the north. Governor (*hirðstjóri*) in 1427, probably 1426-8. Elevated to nobility. Died in 1432. His son was Þorvarðr, an alleged leader in Skálholt in 1433, against Gerechini. Another son was Ormr.
2. *Ormr Loftsson, hirðstjóri* in the north and west in 1436 (possibly 1432-45). His sons Einar and Loftr.
3. *A. Einar Ormsson, hirðstjóri* in 1467-70.
B. Loftr Ormsson, elevated to nobility (*vopnari: armiger*).

Björn Þorsteinsson divided the fifteenth-century Icelandic magnates into two groups, the friends of the English versus their opponents, and Arnór Sigurjónsson did the same, along the lines of Björn. Loftr Guttormsson was postulated among the friends of the English (see diagram 1). He was governor in 1427, probably from 1426 to 1428. Bishop John Craxton called Loftr his friend and he therefore is grouped with the friends of the English, at least after 1428. This reasoning is not satisfactory because one of the sons of Loftr was Ormr and was governor in 1436; he possibly kept that position for as long as from 1432 to 1445. All the same, he is grouped as an ally of the English by Arnór Sigurjónsson. We can ask: How could he have been governor in 1436 if he supported the English against the king? That is hardly conceivable.³⁰ Not to mention that he was a brother of Þorvarðr, who is said to have been one of the three leaders when Gerechini was killed. If both Loftr and Þorvarðr were friends of the English, Ormr would at least have been found too suspicious to get the office. A son of Ormr was Einar, who was governor in 1467–70 and had some Englishmen arrested and executed in 1470, which of course puzzled Arnór Sigurjónsson. Loftr Guttormsson belonged to the gentry, and was probably armiger or væpner, and the son of Ormr, Loftr Ormsson, also belonged to the gentry.

³⁰ Björn Þorsteinsson was aware of this and pointed out that the Norwegian council of the realm had become strong and suggested that it probably stood behind Ormr in 1436 (1978: 14–15). However, the council had not completely taken over from King Erik in 1436 and, also, it stood behind him and supported his policy; see later.

Diagram 2: Þorleifr Árnason and some of his descendants

1. *Þorleifr Árnason* in Vatnsfjörður. Died 1433. His sons Einar and Björn.
2. A. *Einar Þorleifsson, hirðstjóri* in the north and west 1445-52 (-53?).
B. *Björn 'the rich' Þorleifsson, hirðstjóri* 1457-67. Killed by the English in 1467. His son Þorleifr.
3. *Þorleifr Björnsson, hirðstjóri*, probably 1477-84. *Vopnari (armiger)*.

There was the other family, that of Þorleifr Árnason (see diagram 2), and they competed with Loftir Guttormsson's family for the post of governor, in the north and west. In 1445, Einar, son of Þorleifr, became governor and thus outmanoeuvred the others. He made life difficult for Loftir Guttormsson's family by drawing the attention of the king to a certain sheriff, Guðmundr Arason, who had behaved illegally and robbed farmers in 1427, when Loftir was governor. The point was that Loftir, who probably appointed Guðmundr as sheriff, did not react in the case; Ormr lost the job, in all likelihood as a result of these accusations. Björn ríki, the brother of Einar, also became governor and later so did his son Þorleifr, and this father and son were elevated by the king and thus belonged to the gentry. There were great clashes between Björn ríki and Loftir Ormsson.³¹ Björn is well known for his fate at the hands of the English in 1467.

I won't go further into details, but would only like to point out that by appointing men as governors and by elevating them socially, the king had the means to attract ambitious men and make them his loyal servants. He could play them one against the other, and this is called 'divide and rule' ('divide et impera'). The governors were probably on their toes to serve as best they could because they knew their competitors were watching over them and would report any faults and blemishes to the king. The office of the *hirðstjóri* was entrusted to wealthy men and was important if it is right, which is generally believed, that these high officials were

³¹ Guðmundr Arason went to Denmark and then disappeared. It has been suggested that he moved to 'his friends' in England because of dire circumstances in Iceland and disfavour of the king; cf. Arnór Sigurjónsson 1975: 111–12. There is not a shred of evidence for this, not even a hint for any contacts of Guðmundr with the English. The only magnate we know who moved to England to live there was the former governor (*hirðstjóri*) Vigfús Ívarsson in 1415 and this was taken very seriously by King Erik and the government, and it cost his family considerable sums of money; cf. DI III: 764–65; IV, 284–85. The courtier Arnfinnr Þorsteinsson, who was governor in 1419, was accommodating towards the English and in 1420 was deprived of his office and degraded; cf. Björn Þorsteinsson 1970b: 52–53, 61. Probably the king also found his governor, Bishop Árni Ólafsson, too accommodating, and he probably did not achieve what the king wanted; see Björn Þorsteinsson 1978: 9. It was dangerous for the high officials in Iceland to be friendly with the English.

free to appoint sheriffs. This is why there is a pressing reason for concluding that the kings were in control, including King Erik around 1430, even though his situation was somewhat precarious abroad in the 1430s.³²

So this is the point which should not be missed about the kings in Iceland, they controlled the officials and therefore their position was not weak. Chaos or riots and violence have all been exaggerated by the scholars. And even though some magnates may have been friendly with the English, it is difficult to see them generally as their puppets.

If we see the position of King Erik as strong rather than weak in 1433, we can conclude that he was rather sympathetic with those who assaulted the bishop and his men in 1433. Otherwise, he might have taken some action against them. A reason to think so is that in 1450, in his *Long Amendment* (Langaréttarbót) King Christian I forbade that anyone should employ for service among others those who had killed as bishop. First they had to be sent to Norway to pay fees and to be granted permission to stay in Iceland.³³ Not only the killing, but also ‘atvist’, to be present and involved, was a serious matter which had to be atoned for.³⁴ We can compare the case with Bishop Adam of Caithness who was suffocated in 1222 or rather reviled, stoned, beaten and burnt alive. Because of this, the King of Scots had many men punished through mutilations and confiscations. He also went on a retaliatory expedition to punish the perpetrators and the Earl of Orkney was included for suspicion of conniving. This intervention by the king was approved of by the pope.³⁵ The King of Scots probably found this politically expedient, as scholars have pointed out. It was the other way round with King Christian I, when the Hansa merchants of Bergen in 1455 had killed Bishop Þorleifr. The king found it politically expedient to be lenient towards the merchants and in 1469 released them from the fines he could have demanded.³⁶ King Erik in the same vein did not want to punish his loyal supporters in Iceland, as he probably did not find it politically expedient. He could most likely have finished off men like Teitr Gunnlaugsson and the Loftr family but he did not. Instead, they were probably more loyal to him than ever.

32 Helgi Þorláksson: 2004

33 DI V: 66

34 For instance DI V: 135-6; Stig Iuul 1966: 513-14

35 Thomson 1987: 81. Crawford 1989: 136; Chesnutt 1981: 51-55. Four bishops had sent a report to the pope about the killing of Bishop Adam and seem to have waited for instructions.

36 Benedictow 1977: 59-60, 201

King Erik not formally hailed but strong all the same

Two charters more than most seem to support the view that King Erik had a strong position in Iceland, one from 1419 and the other is the ‘resolution’ from 1431.³⁷ In the first one, 24 leading Icelanders at the alþingi declare that they want to hail King Erik (viljum yður hylla). In other words, they had apparently not hailed him so far. This document has been seen as a chart of acclamation,³⁸ which is hardly true since it lacks the conventional conditions. However, there is no doubt about the wish to hail the king. The second one, the resolution from 1431, was accepted generally at the alþingi. In it, leading Icelanders express their will to be faithful and loyal towards King Erik. This one has been called the latter or second letter of acclamation.³⁹ It can be seen as an indication for the king not respecting the wish of the Icelanders in 1419, but they still wanting to hail him. There is no reason to believe that the Icelanders ever hailed King Erik formally, even though they wanted to.⁴⁰ It should be noted that the only contemporary annal for this period, Nýi annáll, does not mention any hailing in Iceland of King Erik even though it is rather detailed and mentions the king five times.⁴¹

If this is correctly understood, the question is why King Erik was never hailed in Iceland. The Icelanders had hailed King Hákon in 1377, both at the alþingi and in each of the shires (sýslur, sing. sýsla). They hailed the young King Olav in 1383. It obviously took 2–3 years to arrange for the ceremonies and it has been suggested that one part of the arrangements was to have the conditions of the Icelanders prepared and negotiated, which took some considerable time.⁴² We have no independent charters preserved for 1377 and 1383 but Skálholtssamþykkt from 1375 is usually seen as giving a fair idea about the Icelandic conditions in 1377.

The so-called ríkisins menn í Noregi, the bishops and the magnates that were close to the regent, Queen Margaret, decided in February 1389 that her relative,

37 DI IV: 268–69; IV, 461–62

38 In DI IV: 268–69 and NgL 2. ser (1912)

39 In DI IV: 461–62 and NgL. 2 ser (1912)

40 It is generally accepted that King Erik was hailed both in 1419 and 1431; see Björn Þorsteinsson, Guðrún Ása Grímsdóttir 1989: 246

41 Found as part of Lögmansannáll in *Íslandske Annaler*. Not only Nýi annáll, but the late annals Gottskálksannáll and Skarðsárannáll also fail to mention this. The Icelanders often declared their wish to be loyal to individual kings without this being seen as hailing.

42 Jón Jóhannesson 1958: 59

Erik, should be king in ‘Noregs ríki’, i.e. the whole realm, including the skattlands.⁴³ The following summer, he was hailed on Eyrating in Nidaros, which was the proper thing to do.⁴⁴ ‘Noregs ríki’ or ‘Noregs veldi’, the realm, was divided into two parts: Norway proper and the skattlands.⁴⁵ Usually, the king would speak of ‘our’ (vár) skattlands or refer to them as ‘skattlanda várra’, meaning our, i.e. my, skattlands.⁴⁶ Others referred to them as the king’s skattlands.⁴⁷ Only during times of minority as in 1319–31, when King Magnus was under age, or in the minority years of King Olav (1380–85), would the council of the king govern in the skattlands in his name. Otherwise, it functioned mainly as a group of councillors. The group of the ‘ríkisins menn í Noregi’ can be seen as the council of Norway and they also decided that King Erik was the rightful heir in the skattlands. Their next natural move should have been to ask the inhabitants of the skattlands about this, which they do not seem to have done. However, the Earl of Orkney was present in February 1389 and accepted their decision.

One possible reason for not asking the Icelanders might have been that Queen Margrete had been accepted as the regent from 1388 until her dying day.⁴⁸ The Icelanders were not asked for any acclamations for Erik in 1397 at the founding of the Kalmar union and neither when the queen died in 1412, as far as we know. Since the king did not meet the wishes of the Icelanders in 1419 to hail him, it seems that he was following a new policy. The idea seems to have been that there was a joint government of king and council for Iceland. In May 1425, for instance, King Erik issued a letter to prohibit the trade of foreigners in Iceland, Helgeland and Finnmark; according to the letter, this took place in Oslo and the council was present under the deliberations and helped the king in this matter of the three and more skattlands.⁴⁹ If we are to believe the letter, the king did not summon some councillors at random, and the whole council was active in this case. King Erik probably was prepared to let the council in Norway take care of the routine government of Iceland. However, the letter is not well preserved and the dating might be wrong. It has been suggested that

43 NgL 2. Ser. (1912): 7–9

44 *Íslandske Annaler*: 418. NgL 2. ser. (1912)

45 Berlin 1909: 136

46 DI II: 846; III: 178, 368, 370; IV: 322–24

47 DI III: 333. *Hirðskrá* (*Hirðskræen*) says the king appoints officials for his skattlands, or ‘skattlönd sín’ (80). In one instance, there is ‘hans skattlöndum’ where ‘hans’ can hardly refer to Norway (68); in any case, it is suspect.

48 NgL 2. ser. (1912): 3–4

49 DI III: 321–24

the council did this on its own accord even though it did it in the name of the king.⁵⁰

It seems to be generally accepted among Scandinavian historians that in the wake of the coronation in Kalmar in 1397, the council in Norway grew in importance and was supposed to take on more tasks.⁵¹ The aforementioned letter of 1425 seems to be an indication of this but might be a defect. However, there are other indications for increased involvement of the council in the routine government of Iceland. The detailed report of the king's representative in Iceland, Hannes Pálsson (Johannes Pauli), on the conduct of the English in Iceland in 1420–25, was sent to the council of the realm, which sent it on to the city council of Bergen for inspection and comments.⁵² Here the council of the realm is the central organ in the government of Iceland. Another example is that of the bishop of Hólar, John Craxton, who took some Englishmen under his protection. In a letter of October 1431, found in his original book of letters, he declares that he is willing to come forward with the English before the council of the realm, granted that he and the English will enjoy immunity from the king, further stating that they will defend themselves against the king in accordance with law and justice.⁵³

It is difficult to imagine the Icelandic governors not paying heed to the leading magnates in Norway, all of whom were loyal to King Erik. Prior to c.1435, the Norwegian council was not as radical as its counterparts in Sweden and Denmark that adopted the policy called *regimen politicum* against the formal union of three states and against foreign officials; this policy was especially prominent in Sweden in the first half of the fifteenth century while in Norway the members of the council were loyal to King Erik and the union and were closer to what was called *regimen regale*. However, when the king had left for Gotland in the autumn of 1436 and stayed there, the council in Norway had to act. Like Queen Margrete, King Erik had his men accepted as bishops by the pope, and still in 1437, a man very close to him, the Dutch Gozewijn Comhaer, became bishop in Skálholt, the last one of the typically popish bishops, chosen by the king. This does not mark the end of the direct influence of King Erik in Iceland; he still had some powerful supporters like Óláfr Nikulásson, i.e. Olav Nilsson, in Bergen and Teitr Gunnlaugsson in

50 Hamre 1972: 85. Hamre suggests the council did this in collaboration with the queen since the king must have been away.

51 Nielsen: 1880: 320; Opsahl 1995: 484

52 DI IV: 337. The answer of the city council, of September 1426, is found in the original, attached to the report.

53 'þá bjóðum vér oss og þá fram undir míns herra kóngsins náð og ríkisins ráð að svara þar lögum og rétt mínum herra kónginum þar fyrir.' DI IV: 478. Also see Skarðsárannáll for 1431

Iceland. In 1438, Óláfr became *hirðstjóri* in Iceland, showing the strong position King Erik and his closest allies still had in Norway and Iceland. This supports the view that King Erik could have his say in Iceland when he wished and he could count on some support from leading men in Norway. However, there were strong sentiments among the people in Norway against foreign officials who represented the king and the union. The Norwegians wanted the good old office of *dróttseti*, the highest secular office, to be resurrected and a Norwegian to be appointed for the job. This the king granted in 1439. In the middle of the year 1440, King Erik had also lost power in Norway – his days as a functioning king were numbered.

One of the consequences of this was that the council, under the leadership of the archbishop, increasingly interfered in Icelandic affairs. At this time, the archbishop, Aslak Bolt, emerged as a great leader. He pursued the policy of the council in Basel and rejected bishops nominated by the pope. One of these was nominated for Hólar but Bolt chose the Norwegian Gottskálk Keniksson for Hólar in 1441 or 1442 and the other, who was an Englishman, Wodborn by name, and picked by the pope, had to yield. This anti-popish policy was seen as corresponding with good old customs that should be venerated, just like *regimen politicum*.⁵⁴ The council grew in importance under the leadership of Bolt. In 1440, Gottskálk Keniksson had been consecrated as bishop for Hamar in Norway⁵⁵ and he used to have a seat in the council. When he became bishop of Hólar, he still had a seat in the council. It became a rule that whenever the Icelandic bishops were in Norway, they had their places in the council.

From 1383 on and until the reformation, there is no evidence for the Icelanders hailing the kings in a formal way; they were only hailed and crowned in Norway. The council was probably seen as representing the Icelanders during these hailings and coronations. In 1443, there are two examples of the king mentioning the *skattlands* without calling them ‘our’.⁵⁶ The last example of this kind so far known is found in 1454.⁵⁷ The *skattlands* are not especially referred to as ‘our’ or ‘the king’s’ *skattlands* for a long time. However, this expression emerged again in the 1530s.⁵⁸

⁵⁴ Hamre 1968: 99

⁵⁵ Kolsrud, DN XVII B: 278

⁵⁶ DI IV: 644; VIII: 43

⁵⁷ DI V: 127

⁵⁸ DI IX: 522: 761. It would be interesting to know if this had anything to do with the changing position of Norway when it became a province and the days of the council of the realm were numbered.

The status of Iceland

Now some words about the status of Iceland vis-à-vis Norway in the fifteenth century. This is a field which has not been thoroughly explored and the following are only some tentative remarks. So far, we have called Iceland skattland. From 1264 to 1383 the Icelanders probably saw themselves in a sort of 'personal union' with the Norwegian king and they stated their demands each time they accepted a new monarch. They must have disliked not being able to hail King Erik formally like the Norwegians did and the Icelanders used to do after 1262 when new kings were ascending the throne. Reporting that Erik was accepted as and hailed king in Norway in 1389, one of the Icelandic annals adds: 'The people of Norway did not think highly of this and especially not the people of the skattlands.'⁵⁹ The problem for the people in the skattlands might have been that they were not asked, excepting the Earl of Orkney.

Kings were often accepted and hailed in Norway after 1380 until the reformation but in Iceland there is a complete silence in this respect. This is hardly a coincidence, and we would most probably have some knowledge or at least some indications about it if such acclamations had taken place. Therefore, after 1383 and until the reformation, the Icelanders in all likelihood never got the chance to renew their conditions for the acceptance of the kings.

Under these circumstances, the Old Covenant or Gamli sáttmáli (the old agreement) to the Icelanders became a confirmation of old liberties and privileges. The Icelanders, or at least some interest-groups in Iceland, kept alive a policy reminiscent of regimen politicum, and the Old Covenant is a fine expression of this policy.⁶⁰

It has been pointed out that Gamli sáttmáli, in the form which has been dated to 1302, is preserved in at least nine manuscripts from c.1450 to c.1500, but there are no older manuscripts existing.⁶¹ This is interesting and calls for an explanation. First of all, there was very little reason to preserve old charters with their provisos when a new king had been accepted and had granted the provisos which the Icelanders chose to state in their new charters of conditions. The situation around 1440 was quite different, since apparently the Icelanders were not expected to accept kings formally on their own any more. At this time, Gamli sáttmáli was seen as an expression of old, venerated rights, which were very much in the spirit of regimen politicum. And it became very important.

⁵⁹ *Íslandske Annaler*: 418

⁶⁰ It fits in well with how Hamre describes this policy; Hamre 1968: 95, 104.

⁶¹ Boulhosa 2005

From 1262 to 1383, conditions had to be renewed whenever there was a new king. Generally speaking, the main conditions probably were much the same, every time, which is an indication that they were accepted, at least from 1319 on. That probably in the eyes of the Icelanders in the fifteenth century was a justification for talking about the charter of provisos from 1302 as an agreement, a covenant. In other words, they were referring to what they thought were old-established and time-honoured conditions which had turned into permanent rights.

It is suggested here that from the 1440s on the Icelanders tried to make clear that they expected these conditions to be respected. This is how they reacted when they were denied the right to hail the kings in the old and formal way. The natural conclusion is that Queen Margaret and King Erik felt that the acceptance of the kings in Norway was valid for the Icelanders as well.

We can ask: How did the royal officials see the judicial status of Iceland around 1450? An indication is the so-called Long Amendment of 1450 (*Langarétartarbot*), issued by King Christian I in consensus with the Norwegian council as is evidenced by the amendment itself.⁶² At that time, at least two Icelandic officials had a place there, the bishops. In other words, apparently the council was not only expected to accept individual kings on behalf of the Icelanders but also to take care of Icelandic affairs in collaboration with him. This seems to have been the administrative arrangement from the 1420s on.

In 1450, the council formally became an electoral institution and its power increased accordingly.⁶³ The strong position of the council can be seen in 1481 when it protested against some trading licence King Christian I had granted to some Hamburgers who intended to trade in Iceland. True enough, the council did this when the king had passed away but all the same they opposed the royal will.⁶⁴ Thus, the council was much more than a bunch of councillors, waiting to serve the king.

It is to be expected that *Gamli sáttmáli* met some understanding and sympathy in Norway around 1450 since regimen politicum was so triumphant at the time – in one word, *riksrådskonstitusjonalisme*, which gained in momentum. Indications for a good reception of the stipulations of *Gamli sáttmáli* in Norway, i.e. in the council, can be found. In 1480, in a letter sent by 24 Icelanders, sheriffs and members of the law court, from the north and the west to King Christian I and the council in

62 DI V: 62–69

63 On a strong position of the council in 1440–55, see Nedkvitne 1992

64 DI VI: 399–402. Benedictow 1977: 211–12

Norway, they were rather pushy when they defined the stipulation of *Gamli sáttmáli* in 1302 about Icelandic lawmen and sheriffs of Icelandic descentance in such a way that it also applied to governors, *hirðstjórar*.⁶⁵ This demand had not been seen earlier, so far as is known here, and is dubious but obviously it was in the spirit of *regimen politicum* and they call this their right.⁶⁶ This demand of the Icelanders in 1480 for a governor of Icelandic descentance was in keeping with the policy of the council. In a letter of 25 August 1481, the council declared that King Christian had promised only to appoint indigenous and native men for posts in Norway and not give any fief or land to foreigners. As they saw it, the same applied to Iceland and therefore they appointed the Icelandic armiger Þorleifr Björnsson as governor in Iceland and the Westman islands for 3 years. What had appalled the Icelanders in 1480 was that both the governors were of German origin. We know the nationality of one of them for certain, the German Didrich Pining, and the name of the other one was Henrik Daniel and he was neither Icelandic nor Norwegian, as far as we know.⁶⁷ Þorleifr had become governor in one half of Iceland in 1478 and Pining in the other.⁶⁸ In 1480, Þorleifr was replaced by Henrik Daniel, and the Icelanders, at least the supporters of Þorleifr, were baffled. Obviously, the Icelandic aristocrats in general did not like Germans to occupy the posts of governors. The rule at this time was that the governors appointed the sheriffs and this doubtless troubled the minds of the Icelandic aristocrats, as the foreign governors were more than likely to pick their own countrymen for the jobs. Þorleifr left for Norway and explained the situation to the council of the realm. It so turned out that the members of the council agreed to the Icelandic view and shared the sentiments against the foreign officials.⁶⁹

Among the members of the council were the bishop of Hólar and now Þorleifr became a member. It is interesting to see that he had his own place in the council. At least some Icelandic magnates saw the interference of the council in Icelandic matters as rightful.

65 DI VI: 282–85

66 True enough from 1302 on they demanded Icelandic sheriffs and since one of those, or two at a time, often were governors it might have seemed natural that they were included.

67 On Pining, see DI VI: 140, 150, 211. On Henrik Daniel, see Björn Þorsteinsson 1970b: 194. A certain Henrik Kepken was governor of Iceland in the 1470s and Björn suggests he was the same as Henrik Daniel and the son of Daniel Kepken. Therefore, the Icelanders called him Henrik Daniel, says Björn. The arguments are not totally convincing since foreign merchants seem to have called him Henrik Daniel as well; see DI IX: 43.

68 On Þorleifr, see DI VI: 128, 140, 196, 200, 213, 248–49. It was probably of some importance that Þorleifr's brother, Árni, died in the service of King Christian at the battle of Brunkeberg in 1471.

69 On anti-German sentiments in Norway, see Ole Georg Moseng et al. 2003

The council stated its policy in a letter to the king on 1 February 1482 in the following way:

Item at Jsland antwordes en indfödder Norges man, ock then seglatz som til Jsland är aff vtenske men är Norges Rige til stor skade ock forfang Norges Radh enthet at sporde aff leggis.⁷⁰

Here the council clearly opposes foreign officials in Iceland. The foreign trade of Iceland had been in the hands of the English. However, Germans from the continent competed with them from around 1475 and even Germans from the Bergen Hansa, which was a novelty. The Icelandic aristocrats in their letter of 4 July 1480 to the king and council in Norway state that the Icelanders were complaining about foreign merchants who stayed in Iceland over the winter and did not respect domestic prices. Þorleifr probably explained this to the council. As a member of the council, he probably supported its trade policy and most likely welcomed trade of the Bergen Hansa people. However, we have to leave out a further discussion on this.

Obviously, King Hans accepted Þorleifr as governor in Iceland as shown by his letter of 26 July 1483.⁷¹ All the same, in a letter of 26 November 1483, King Hans decided that the German Pining should replace Þorleifr as governor for the whole of Iceland since the latter had not turned up in Denmark and paid a visit to the king and confirmed his loyalty, as the king states in his letter. He maintains that there were no other able candidates in Iceland he could trust for the office.⁷² To the dismay of the leading Icelanders in the next decades, King Hans appointed some other foreigners as governors in Iceland. Again in 1491, in the same way as in 1480, 24 sheriffs and members of the law court from the north and west with one of the lawmen sent a letter to the king and pleaded with him to appoint a certain Icelandic as *hirðstjóri*. This was ‘jungherra’ Einar, a brother of Þorleifr Björnsson. They say it is stated in the *sáttmáli* between the king of Norway and those who accepted to pay tax that all officials were to be Icelandic. These two letters from the Icelanders to the king in 1480 and 1491 mention the law code and the *sáttmáli* (Old Covenant) together as two cornerstones for the constitution of Iceland.⁷³

⁷⁰ DI IX: 40

⁷¹ DI VI: 497

⁷² DI VI: 506–07

⁷³ DI VI, 283, 284, 754

Is it possible that the Norwegian council of the realm was positively disposed towards the Old Covenant? We don't know. All we know is that good old customs were the leading policy from around 1450, in the spirit of *regimen politicum*, and this is exactly what the Old Covenant was all about. The council had its periods of independence during vacancies, in 1440–42, 1448–50 and 1481–83. However, usually the monarch could keep the council in check.⁷⁴ In spite of the tension, the council was a formal part of the government of Iceland and the status of Iceland had definitely changed, with King Christian I, if not earlier, even in the 1420s. The question is: How did the status of Iceland change when the council grew in importance and became the council of the realm? The Icelanders kept on referring to Iceland as a *skattland*. What it meant to them and whether the meaning changed we don't know. However, in the spirit of *regimen politicum*, the *lögrétta* (the law council) at the *alþingi* was probably seen as representing the Icelanders towards the king and the king alone, prior to 1383. Of course he could summon councillors both Norwegian and Icelandic but it did not entail that the Icelanders were governed by the council of Norway with the exception that it formally took care of Icelandic affairs when the king was under age. These personal contacts between the Icelanders and the kings completely changed character around 1420, when the council became the council of the realm and functioned as a collaborator of the king in Icelandic matters. The status of Iceland obviously changed, and we have to see it from now on as under the joint guidance of the Norwegian council of the realm and the king. The council gathered during vacancies but a question of importance is whether it also gathered on its own initiative or only when it was summoned by the king. It took care of judicial matters and legislation and therefore had to convene under such circumstances and also when privileges were issued but this was hardly regular.⁷⁵ However, it could have its say frequently enough in cases of governors and foreign trade of Iceland.

In 1496, *Gamli sáttmáli* was referred to as a charter of fundamental rights at the meeting in *Áshildarmýri*.⁷⁶ In the late fifteenth and the sixteenth centuries, the Icelanders expected their kings to respect these rights. *Gamli sáttmáli* (the Old Covenant) was printed with the law code in 1578. The council of the realm in Norway could have its say and the Icelanders reacted to this modification, the role of the council, with their *Gamli sáttmáli* and new demands, which met some understanding in the council.

⁷⁴ Helle 1969: 228–29

⁷⁵ Ibid.

⁷⁶ DI VII: 321–24

But are we necessarily well advised to reject the concept of skattland and adopt something else, such as biland for instance? There does not seem to be a clear distinction between a skattland and a biland, the latter concept being rather widely used in the nineteenth century, applicable for both skattlands and colonies.⁷⁷ All the same, it seems worthwhile to make a distinction, or adopt a new expression, thus pointing out that Iceland changed from a skattland, in some sort of a ‘personal union’ with the king and his hereditary dynasty, into a dependency of an electoral land, to a great extent subject to the Norwegian council of the realm. The concept of biland could be an option and it is translated as dependency in English and is defined thus: ‘A dependent territory, dependent area or dependency is a territory that does not possess full political independence or sovereignty as a sovereign state yet remains politically outside of the controlling state’s integral area.’⁷⁸ This means that Iceland was not a province.⁷⁹ It retained some of its political autonomy and its own laws. The Icelanders did not want to lose what they had gained at the time of the personal union with individual kings and therefore Gamli sáttmáli became so important to them. However, the council of the realm probably wanted to see Iceland as something different from what it had been prior to 1388. It is suggested here that from around 1420, if not earlier, Iceland was represented by the council which hailed the king on behalf of the Icelanders and took care of governance with him and sometimes even on its own. But it did not mean that the Icelanders were not able to further their interests in the spirit of *regimen politicum* as the case for *hirðstjóri* shows; officials in Iceland were to be of Icelandic descent. That was in keeping with a well-known stipulation from 1302 in Gamli sáttmáli. The council obviously could accept this stipulation in the Gamli sáttmáli, and possibly the whole of it.

Conclusions

A few concluding remarks. It seems obvious that King Erik could have his say in Iceland, and that his position was not weak; when he wanted to concentrate on Iceland, he could make his grip firmer; he did not oppose his men in Iceland who had Bishop Gerechini destroyed, and they kept their positions. This is interesting because he usually was quick at punishing those officials who offended him or

⁷⁷ Berlin 1909: 145–48

⁷⁸ UN resolution 1514.

⁷⁹ Meaning that it was not administrated from Norway as regions within Norway. It has been stated that Iceland was seen as ‘skattland Noregs eða landshluti’; Björn Þorsteinsson, Guðrún Ása Grímsdóttir 1989: 246

whom he disliked. The main reason for his, as it seems, strong position is probably that the magnates in Iceland were loyal to him, even though many seem to have sympathized with regimen politicum. They were, generally speaking, willing to serve as sheriffs and governors and be lifted as armigers or knights. It also helped that the most important magnates in Norway were loyal to King Erik, generally speaking. The English impact has been overemphasised; the overarching concern of the Icelandic magnates always was the king and court and finally also the council of the realm. When the king had moved to Denmark, and especially in the wake of the founding of the Kalmar union in 1397, the Norwegian council of the realm became very important and represented the Icelanders when the kings were being hailed. It was not possible anymore for the Icelanders, as it seems, to negotiate the contents of their charters of provisos (conditions). However, the Icelandic magnates took good care of what they called old rights and referred to old demands in charters of provisos which they maintained had been accepted. This they referred to as Gamli sáttmáli and it became very important because the status of Iceland was altered; the skattland apparently became somewhat different, more like what has here been called a biland, and they were not asked anymore to accept kings formally on their own. Conventional charters had provisos they could not draft any more and had to resort to other means. This is where Gamli sáttmáli comes in; the Icelandic leaders decided that the Old Covenant, allegedly from 1302, was an old agreement, a charter of rights. The council of the realm seems to have been positively disposed towards the Old Covenant.

Bibliography

- Arnór Sigurjónsson, *Vestfirðingasaga 1390–1540*, Reykjavík 1975
- Benedictow, Ole Jørgen, *Fra rike til provins 1448–1536*. Norges historie 5. Ed. Knut Mykland. Oslo 1977
- Berlin, Knud, *Islands statsretlige Stilling efter Fristatens Ophør*. København 1909
- Björn Þorsteinsson, Sendiferðir og hirðstjórn Hannesar Pálssonar og skýrsla hans 1425, *Skírnir* CXXVII (1953): 136–64
- B.Þ. = B[jörn] Þ[orsteinsson], Samtíðarheimild um fall Jóns biskups Gerrekssonar komin í leitirnar. *Saga* VIII (1970): 297–8
- Björn Þorsteinsson, *Enska öldin í sögu Íslendinga*, Mál og menning: Reykjavík 1970
- , Glæpur án refsingar. Jón biskup Gerreksson 1426–1433. *Á fornum slóðum og nýjum. Greinasafn gefið út í tilefni sextugsafmælis höfundar 20. mars 1978*

- (Sögufélag: Reykjavík 1978), 3–20. [This article is based on a lecture Björn delivered at the regular congress of Nordic historians, held this time in Uppsala, Sweden, 1974; published in *Frán medeltid till välfärdssamhälle*. Nordiska historikermötet i Uppsala 1974.]
- Björn Þorsteinsson, Guðrún Ása Grímsdóttir, *Norska öldin með viðaukum eftir Sigurð Línal. Saga Íslands IV*. Ed. Sigurður Línal (Hið íslenska bókmenntafélag, Sögufélag: Reykjavík 1989): 61–258
- Boulhosa, Patricia Pires, *Icelanders and the Kings of Norway. Medieval Sagas and Legal Texts*, Leiden & Boston 2005
- Chesnutt, Michael, Haralds Saga Maddaðarsonar. *Speculum Norroenvm. Norse Studies in Memory of Gabriel Turville-Petre*. Ed. Ursula Dronke, Guðrún P. Helgadóttir, Gerd Wolfgang Weber, Hans Bekker-Nielsen (Odense University Press: [Odense] 1981): 33–55
- Crawford, Barbara, Norse earls and Scottish bishops in Caithness. A clash of cultures. *The Viking Age in Caithness, Orkney and the North Atlantic. Select Papers from the Proceedings of the Eleventh Viking Congress*, Thurso and Kirkwall, 1989. Ed. Colleen E. Batey, Judith Jesch, Christopher D. Morris (Edinburgh University Press: Edinburgh 1993): 129–47
- DI = *Diplomatarium islandicum*. Íslenskt fornbréfasafn I–XVI (Kaupmannahöfn, Reykjavík 1857–1972)
- Gottskálksannáll, see Gottskalks Annaler, *Íslandske Annaler*, 297–378
- Gunnar F. Guðmundsson, *Íslenskt samfélag og Rómakirkja*. Kristni á Íslandi II. Ed. Hjalti Hugason, Alþingi: Reykjavík 2000
- Hamre, Lars, *Norsk historie frå omlag år 1400*. Førellesningar, Oslo 1968
- , Andmæli við doktorsvörn, *Saga X* (1972): 179–96
- Helgi Þorláksson, *Vald og ofurvald*. Kistan 30 september 2004, <http://kistan.is>
- Helle, Knut, Rigsråd. Norge. *Kulturhistorisk leksikon for nordisk middelalder XIV*, Reykjavík 1969: 223–30.
- Hirdskræen*. *Hirdloven til Norges konge og hans håndgangne menn*. Ed. Steinar Imsen, Oslo 2000
- Imsen, i Imsen, Steinar, Jørn Sandnes, *Avfolkning og union*. Norges historie IV. Ed. Knut Mykland, Oslo 1977
- Íslandske Annaler indtil 1578*. Ed. Gustav Stom, Christiania 1888
- Iuul, Stig, Meddelagtighed, Norge, *Kulturhistorisk leksikon for nordisk middelalder*, vol. XI, Reykjavík 1966: 513–14
- Jón Egilsson, Biskupa-annálar Jóns Egilssonar. *Safn til sögu Íslands og íslenskra bókmenta að fornu og nýju I*, Kaupmannahöfn 1856: 15–136

- Jón Jóhannesson, *Íslendinga saga II. Fyrirlestrar og ritgerðir um tímabilið 1262–1550*, Reykjavík 1958
- Lára Magnúsdóttir, *Bannfæring og kirkjuvald á Íslandi 1275–1550. Lög og rannsóknarforsendur*, Háskólaútgáfan, Reykjavík 2007
- Kolsrud, Oluf, *Den norske Kirkes Erkebiskoper og Biskoper indtil reformationen. Diplomatarium norvegicum (DN). Tillæg til syttende samling (XVIII B)*. Christiania 1913
- Losman, Beata, *Norden och reformkonsilierna 1408–1449*. Studia historica gothoburgensia XI, Göteborg 1970
- Moseng, Ole Georg, Erik Opsahl, Gunnar L. Pettersen, Erling Sandmo, *Norsk historie I, 750–1537, 2. impression: [Oslo] 2003*
- Nedkvitne, Arnved, *Det norske riksrådet og utenlandske kjøpmenn 1440–1455. Kongsmenn og krossmenn. Festskrift til Grethe Authén Blom*. Ed. Steinar Supphellen. Det kongelige norske videnskabers selskab. Skrifter 1, Trondheim 1992: 231–54
- NgL 2nd series.= *Norges gamle Love*. Anden Række, 1388–1604. Ed. A. Taranger. I 1388–1447, Christiania 1912
- Nielsen, Yngvar, *Det norske Rigsraad*, Kristiania 1880
- Opsahl, Erik, *Erik av Pommerns kroning og Norges rolle i dannelsen av Kalmarunionen*, *Historisk tidsskrift* 4 (1995): 473–91
- Skarðsárannáll 1400–1640, *Annálar 1400–1800. Annales islandici posteriorum sæculorum I*, Reykjavík 1922–1927: 28–265
- Skarphéðinn Pétursson, *Um Jón Gerreksson*, *Skírnir* CXXXIII (1959): 43–80
- Thomson, William PL., *History of Orkney*, Edinburgh 1987

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